

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

Leon Gates, :  
 :  
 Plaintiff, :  
 :  
 v. :  
 :  
 Brian Masterson, Lester Small, Garrick :  
 Rollings, :  
 :  
 Defendants. :

**COMPLAINT**  
**(Jury trial demanded)**

Plaintiff alleges as follows:

**PARTIES**

1. Plaintiff is a citizen and resident of Bennettsville, South Carolina.
2. At the time of the incident at issue in this case, Brian Masterson was a correctional officer employed by the South Carolina Department of Corrections (“SCDC”) at the Kershaw Correctional Facility (“Kershaw”). At all relevant times, Masterson was a person acting in the course and scope of his duties as an employee of SCDC and was acting under the color of state law. Masterson is sued in his individual capacity.
3. At the time of the incident at issue in this case, Lester Small was a Lieutenant employed by SCDC at the Kershaw. At all relevant times, Small was a person acting in the course and scope of his duties as an employee of SCDC and was acting under the color of state law. At all relevant times, Small was an SCDC supervisor who had the responsibility to supervise and train SCDC correctional officers, including Masterson. Small is sued in his individual and supervisory capacity.

4. At the time of the incident at issue in this case, Garrick Rollings was a Lieutenant employed by SCDC at the Kershaw. At all relevant times, Rollings was a person acting in the course and scope of his duties as an employee of SCDC and was acting under the color of state law. At all relevant times, Rollings was an SCDC supervisor who had the responsibility to supervise and train SCDC correctional officers, including Masterson. Rollings is sued in his individual and supervisor capacity.

5. Upon information, Defendants are all still employees of the South Carolina Department of Corrections, and one or more of the Defendants are citizens of counties located within this division.

#### **JURISDICTION/VENUE**

6. Plaintiff brings this action under 42 U.S.C. §§ 1983 to vindicate his rights guaranteed by the Eighth and Fourteenth Amendments to the United States Constitution. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

7. Venue is proper in this district under 28 U.S.C. § 1391 as the most substantial part of the events or omissions giving rise to this claim occurred in this district.

#### **FACTUAL ALLEGATIONS**

8. On January 12, 2017, Plaintiff was housed on the A-side of Oak Unit at Kershaw. Plaintiff is nearing the end of his 10 year felony sentence. At the time of the incident, Masterson was responsible for supervising the entire unit.

9. At approximately 4:30 a.m. on January 12, 2017, Masterson was the only officer on duty in the Oak Unit. Notwithstanding, without prior approval from superiors, and without having an extra officer present, Masterson began opening cell doors of inmates scheduled to be transported to another facility. Masterson also opened the cell doors of inmates Gilliard and Johnson, based on Gilliard and Johnson's request for a mop to clean up their overflowing toilet. Inmates frequently

obtain a mop when they plan to stab another inmate because: a) it results in their cell door being opened; and 2) they can clean up the blood after they stab the inmate. Masterson claims that he was ignorant of this at the time of the incident, but he has since been instructed on this by his supervisors.

10. At the time, Masterson did admittedly know that Gilliard, in particular, had a past of violent behavior and contraband weapon possession. In fact, in the months prior to the incident, Masterson himself “shook down” Gilliard and confiscated a “homemade weapon” from him. And Gilliard’s pre-incident disciplinary history includes three disciplinaries for possession of a weapon and five disciplinaries for “threatening to inflict harm on employee.” It was well known to the Defendants prior to the incident that Gilliard was known for extorting other inmates in the unit by threatening to stab them with his homemade knife.

11. After releasing the violent inmates and the transport inmates from their cells, Masterson either left A-side to deal with inmates on the B-side, or went outside to get fresh air, depending on which version of Masterson’s story is believed. In any event, he left A-side completely unsupervised with Gilliard and the transport inmates roaming freely. Surveillance footage from the day of the incident shows Masterson abandoning his post and exiting the wing at approximately 3:38 a.m.

12. Approximately two minutes after Masterson abandoned his post, Plaintiff began to take his mattress to the front of the A-side as instructed, since he was one of the inmates scheduled to be transported to another facility, and Gilliard, came around the corner to begin watching Plaintiff from a location that was behind Plaintiff and out of Plaintiff’s view. As Gates continued toward the front of the unit with his mattress the attackers begin to sneak up from behind. When Gates reached the location at which he was supposed to leave the mattress, Gilliard came from behind

and immediately stabbed Plaintiff in the neck while Johnson was still running to the location to join in the attack. Plaintiff fell to the floor and Gilliard continued to repeatedly stab him, and Johnson joined in the attack once he reached the location.

13. Plaintiff was able to get to his feet and he tried to run while the attackers continued to stab him. He fell on the floor next to a table, but the table only provided protection for a fleeting second before the attackers were able to flip the table and continue stabbing. Plaintiff was able to get to his feet and run toward the stairs and his cell, with the attackers following him and continuing to stab him. Plaintiff fled the attackers by running around the unit, and eventually obtained enough separation to come back to the stairwell leading to his cell.

14. Plaintiff then fled up the stairs toward his cell, with the attackers pursuing and stabbing him along the way. Plaintiff finally made it to his cell where he could close the door and keep the attackers out.

15. The second that the attack finished, Masterson reentered the unit. Despite the numerous pools of bright red human blood and other signs that a violent event had taken place, Masterson did nothing to intervene, offered no medical treatment, and allowed Gilliard to go up the stairs to the Plaintiff's cell.

16. When Gilliard left Plaintiff's cell door and reached a safe distance away from Plaintiff, Plaintiff began running toward the front of the wing where Masterson was still located. Plaintiff collapsed in a pool of blood before he could make it down the stairs. Masterson continued to do nothing while Gilliard made his way from the other side of the unit to the location where Plaintiff laid dying, and Gilliard spit on Plaintiff's apparently dead body.

17. Masterson then intervened for the first time once Gilliard was back in the area of his cell and called for backup and first responders. Seconds after Masterson called for first responders and

backup, another officer and a stretcher arrived, Gilliard was placed back in his cell, and Gates was given medical treatment. The aftermath was horrific, and was described by Masterson in his testimony under oath as a “bloodbath.” The delay in providing medical treatment caused the Plaintiff to, among other things, lose larger amounts of blood that required blood transfusion. A quicker response would have reduced the amount of blood loss, and would have prevented other harms to the Plaintiff.

18. In all, the Plaintiff was stabbed nine times, with stab wounds to his neck, his right hand, his right forearm, his shoulder, and multiple stab wounds to his back. The Plaintiff was transported to the hospital following the incident where he was given blood to replace the massive blood loss, and was placed under general anesthesia so that the stab wounds could be surgically repaired. Several days later, the Plaintiff had another surgery to repair the tendons in his right hand and arm.

19. Because of the inconsistencies in the statements provided by Masterson after the incident, and because of the mind boggling level of policy violations, a SLED investigation was commenced that included the performance of a polygraph test. The polygraph examiner noted that responses to two questions were “indicative of deception,” including whether Masterson knowingly allowed the inmates to harm Plaintiff and whether Masterson knowingly allowed the inmates to harm Plaintiff at Kershaw.

20. Upon information and belief, Masterson was induced by the attackers to leave the unit after releasing them from their cells for the purpose attacking the Plaintiff, and Masterson was otherwise deliberately indifferent to the specific threat of substantial harm to the Plaintiff. Upon further information and belief, Masterson heard and/or saw that the attack was in progress from the off-camera location where he was waiting, but he intentionally failed to intervene personally or to call first responders to intervene, and was otherwise deliberately indifferent to the substantial harm that

was in the process of being inflicted on the Plaintiff. Upon further information and belief, Masterson failed to render necessary medical treatment for the Plaintiff's injuries sustained in the attack despite the obvious need to do so.

21. Masterson admitted under oath that leaving the unit completely unsupervised was a violation of clear SCDC policy and could result in violent inmates harming other inmates. He also admitted that violating these rules endangers inmates, SCDC employees, and the general public in violation of SCDC's mission. At the conclusion of the SCDC investigation, SCDC suspended Masterson for "violation of written rules." Masterson has testified that he was surprised he was cited for this rule violation since his supervisors told him to violate the policies to improve his chances of promotion. Masterson also testified that he was trained by his supervisors to violate the policies at issue.

#### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

22. The Plaintiff was only required to exhaust administrative remedies that were available to him. In this case, administrative remedies were unavailable to Plaintiff for various reasons, including that they were incapable of use to obtain relief, they operated as a simple dead end – with officers unable or consistently unwilling to provide any relief to aggrieved inmates, they were so opaque that they were practically speaking incapable of use such that no ordinary prisoner could discern or navigate them, and prison administrators have a history of thwarting inmates from taking advantage of the grievance process through machination, misrepresentation, or intimidation.

23. The attack occurred on January 12, 2017, and the Plaintiff was transferred to the hospital where he remained until he was discharged on January 14, 2017. Among the Plaintiff's injuries were fractures and severed tendons in his right dominant hand which prevent him from using his hand. The Plaintiff underwent surgery on January 12, 2017 to close most of the stab wounds, and

was placed under general anesthesia with fentanyl and morphine. At the time of discharge, the Plaintiff was diagnosed with “impaired” right upper extremity active range. The Plaintiff was discharged with pain medication and instructions to keep his right hand and arm immobile, and to follow up for surgery to repair the tendons.

24. Plaintiff’s tendons were surgically repaired on January 20, 2017, and he was discharged with a bandaged and splinted right hand, with instructions to not use the hand, operate heavy machinery, and to not make important decisions or sign legal documents:

Inpatient Depart Summary
<p><b>Discharge Unit Telephone Number:</b> 803-434-3131 OUTPATIENT SURGERY  <b>Discharge Prescriptions:</b> Other: LAST PERCOCET X2 TABLETS @ 1:40 PM  <b>Diet:</b> Regular, Advance as Tolerated  <b>Home Activity:</b> Elevate Extremity; Use Ice Pack for 24 hours  <b>Home Activity Restrictions:</b> Don't Operate Heavy Machinery, Don't Drink Alcohol or Smoke <b>Don't</b>  <b>Make Important Decisions or Sign Legal Documents;</b>  Other: NO WEIGHT BEARING RIGHT UPPER EXTREMITY  <b>Driving:</b> No Driving for 24 hrs, No Driving while taking Pain medicine  <b>Lifting:</b> No Lifting, Other: RIGHT ARM  <b>Shower/Bath:</b> May Sponge Bath  <b>Return School/Work:</b></p> <p><b>Surgical Incision/Wound Care:</b> Keep Dressing Dry and Intact</p> <p><b>Worsening Symptoms</b>  <i>(When to Call the Doctor):</i> Symptoms worsen; ; ; ;</p> <p><b>Discharge Instructions Comment:</b> RIGHT ARM:  KEEP ARM ELEVATED, ICE X 48 HOURS, KEEP SPLINT INTACT, NON WEIGHT BEARING</p>

25. At discharge, the Plaintiff’s physician instructed the Plaintiff to follow these discharge instructions and to follow up with SCDC in two weeks. Records from SCDC following the Plaintiff’s return to custody from the hospital note “special needs: keep right arm splint and dressing intact.” The Plaintiff’s right arm remained in a splint until February 28, 2017, and he continued to require “aggressive” physical therapy until at least May 2, 2017.

26. Considering the Plaintiff’s instructions on January 20, 2017 to not make important decisions or sign legal documents until follow up two weeks later when following up with SCDC medical, and considering his impaired dominant right arm that was splinted until February 28, 2017, as well as other factors, it was medically impossible for the Plaintiff to file a grievance within

15 days of the January 12, 2017 incident, or January 27, 2017. As such, administrative remedies were not available to him for clear medical reasons, and no SCDC employees attempted to offer assistance or to extend the deadline to file the grievance until such time as the Plaintiff became medically able to do so.

27. Further, Plaintiff remained under constant threat of retaliation from prison officials in the event that he filed a grievance. As set forth above, Masterson actively allowed the inmates to attack the Plaintiff. Masterson was the subject of a criminal investigation in which he failed a polygraph, and at the conclusion of the investigation, Masterson merely received hours of suspension, and was allowed to return to the prison.

28. For these reasons and others, administrative remedies were not available to the Plaintiff, and when the Plaintiff attempted to file a grievance out of an abundance of caution, his grievance was denied as untimely.

### **CAUSES OF ACTION**

#### **Count 1: 42 U.S.C. Section 1983 Claim Against All Defendants**

29. Plaintiff incorporates all paragraphs above as if fully stated herein.

30. At all relevant times, the Defendants were persons acting under the color of state law, and are sued in their individual capacities for violating the Plaintiff's constitutional rights afforded to him by the Eighth and Fourteenth Amendments to the United States Constitution.

31. At the time of the incident at issue, the Plaintiff had clearly established rights under the United States Constitution:

- a. To be free from cruel and unusual punishment;
- b. To be free from deliberate indifference to a substantial risk of serious harm;
- c. To be free from state created danger;

- d. To bodily integrity; and
- e. To adequate medical care and to be free from deliberate indifference to medical needs.

32. The Defendants violated these clearly established rights in the ways described in summary form herein, and in ways that will be uncovered in discovery and at trial.

33. At all relevant times, Small and Rollings had actual or constructive knowledge that Masterson was engaged in conduct that posed a pervasive and unreasonable risk of constitutional injury to citizens like the plaintiff. The response of Small and Rollings to that knowledge was so inadequate as to show deliberate indifference to, or express or tacit authorization of, the alleged offensive practices. There was an affirmative causal link between the inaction of Small and Rollings and the particular constitutional injuries suffered by the Plaintiff.

34. The unconstitutional misconduct described herein was objectively unreasonable and was undertaken intentionally, with malice and knowing disregard for Plaintiffs' clearly established constitutional rights.

35. As a direct and proximate result of the above constitutional violations, the Plaintiff suffered serious physical and emotional injury.

### **DAMAGES**

36. Plaintiff incorporates all paragraphs from above as if fully stated herein.

37. Plaintiff asks for judgment against Defendant for the following:

- a. For all available actual, compensatory, consequential, economic, noneconomic, and special damages permitted by law;
- b. For punitive damages;
- c. For attorneys fees and costs;
- d. For any other damages allowed by law; and

e. For such other relief as the trier of fact deems just and proper.

**JURY TRIAL DEMANDED**

Trial by jury is demanded as to all issues to the extent permitted by law.

Respectfully submitted,

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