

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION**

COURTNEY UTTERBACK,)		
)		
Plaintiff,)		
)		
v.)	Case No.	11-2131
)		
KENT A. RHOADS, JASON R. BALL and)		
TERRY WEGER,)		
)		
Defendants.)	Jury Demanded	

COMPLAINT

COMES NOW the Plaintiff, Courtney Utterback [hereafter "Utterback"], and for her cause of action against the Defendants, Kent A. Rhoads [hereafter "Rhoads"], Jason R. Ball [hereafter "Ball"] and Terry Weger [hereafter "Weger"] states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this suit because it raises a federal question. This lawsuit is premised upon a violation of Utterback's Eighth Amendment Rights and is brought pursuant to 42 U.S.C. § 1983.

2. The venue of this Court to entertain the issues raised in this case is appropriate by virtue of 28 U.S.C. § 1391(b) since the defendants all reside within the judicial confines of this judicial district and the claims giving rise to the above captioned proceeding did occur within Edgar County, Illinois.

NATURE OF CLAIM

3. This lawsuit alleges that during her incarceration Utterback's rights under the Eighth Amendment to the United States Constitution were violated. In this respect

Utterback alleges that she was sexually abused and denied medical treatment by the defendants during her incarceration in the Edgar County, Illinois, jail.

4. The Eighth Amendment to the United States Constitution provides:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

5. It has long been understood that:

Sexual abuse of a prisoner by a corrections officer has no legitimate penological purpose, and is simply not part of the penalty that criminal offenders pay for their offenses against society. *Boddie v. Schnieder*, 105 F.3d 857, 861 (2nd Cir. 1997).

6. Long ago, our Supreme Court has recognized that an inmate has a right to receive necessary medical care. *Estelle v. Gamble*, 429 U.S. 97 (1976).

PARTIES

7. Utterback is an adult female. She was involuntarily incarcerated at the Edgar County, Illinois jail from January 7, 2010, through July 4, 2010.

8. Rhoads was formerly employed by the Edgar County Sheriff and was assigned to work at the Edgar County jail. He is being named in his individual capacity. All actions undertaken by Rhoads in this lawsuit were undertaken under the color of law.

9. Ball was formerly employed by the Edgar County, Illinois Sheriff and was assigned to work at the Edgar County jail. He is being named in his individual capacity. All actions undertaken by Ball in this lawsuit were undertaken under the color of law.

10. Weger is employed by the Edgar County, Illinois Sheriff and was, at all times, assigned to work as the administrator of the Edgar County jail. He is being named in his individual capacity and to the limited extent that it is necessary to implement equitable relief, in his official capacity as well. All actions undertaken by Weger as alleged in this complaint were taken under color of law.

ALLEGATIONS OF CONSTITUTIONAL VIOLATIONS

11. On December 28, 2009, Utterback plead guilty to a Class A misdemeanor charge of criminal sexual abuse. The docket entry from Edgar County outlined her sentence as follows:

SA and Deft present with Mrs. Dent. Deft sentenced to 180 days ECJ Court will review citations with regard to good time rules applying. Credit for 1 day previously served. Deft is to be released from custody to attend mental health counseling. Deft will be subject to testing of blood, saliva and breath upon each return to jail. Mittimus is stayed until 1/7/10. Cont to 1/7/10 at 9:00 for courts review of citation. Deft OTA. ARE Review set for 1/07/2010 at 09:00 in courtroom 2.

12. Utterback was incarcerated in the Edgar County jail from January 7, 2010 through July 4, 2010.

13. During the period of her incarceration, all three defendants were employed as correctional guards at the Edgar County jail.

14. Approximately one month into her incarceration at the jail, Ball took photographs of her while she was naked. The photographs served no legitimate penological interest but rather were for his own personal benefit.

15. During the course of her incarceration, Ball, against her will, forced her to

have intimate sexual relations with him. Utterback did not consent to these actions.

16. During the course of her incarceration, Rhoads, against her will, forced Utterback to have intimate sexual relations with him. Utterback did not consent to these actions.

17. During the course of her incarceration, Ball and Rhoads provided unlawful drugs and alcohol to Utterback.

18. Weger was advised by Utterback that she needed to receive the mental health counseling that had been ordered as part of her sentence. Despite her repeated requests to Weger, he refused to allow Utterback the opportunity to have the mental health counseling outlined in her sentence.

19. As a result of the foregoing actions, Utterback has sustained damages. Her damages include emotional distress, physical injury, embarrassment and the loss of enjoyment of life.

20. The actions described above violate Utterback's rights under the United States Constitution to be free from cruel and unusual treatment.

WHEREFORE, Utterback respectfully requests that this Court enter judgment in her favor and against Rhoads, Ball and Weger, and provide the following relief:

- (a) Enter a declaratory judgment determining that the actions complained of in this complaint are unlawful in violation of her rights under the Constitution;
- (b) Award Utterback damages for injuries she has sustained;
- (c) Assess against the defendants the costs and expenses incurred by

Utterback in maintaining the above captioned proceeding together with the reasonable attorney fees incurred by her in prosecuting the above captioned cause;

- (d) Assess punitive damages against the defendants; and
- (d) Provide such other relief as the Court deems to be equitable and just.

THE PLAINTIFF, COURTNEY UTTERBACK, RESPECTFULLY REQUESTS THAT ALL ISSUES RAISED IN THIS COUNT WHICH MAY BY LAW BE PROPERLY TRIED BEFORE A JURY BE TRIED BY A JURY.

Courtney Utterback

By: /s/ John A. Baker
Her Attorney

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CIVIL COVER SHEET

The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

(a) PLAINTIFFS

Courtney Utterback,

DEFENDANTS

Kent A. Rhoads, Jason R. Ball, and Terry Weger,

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

John A. Baker, Baker, Baker & Krajewski, LLC
415 South Seventh Street
Springfield, Illinois 62701

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | |
|---|---|---|--|
| Citizen of This State | <input checked="" type="checkbox"/> PTF 1 <input checked="" type="checkbox"/> DEF 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> PTF 4 <input checked="" type="checkbox"/> DEF 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excl. vet.) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Inj.	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Security/Commodity/Exch. <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 ADA—Employment <input type="checkbox"/> 446 ADA—Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- | | | | | | | |
|---|---|--|---|--|---|--|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |
|---|---|--|---|--|---|--|

VI. CAUSE OF ACTION (Enter U.S. Civil Statute under which you are filing and write a brief statement of cause.)

Eighth Amendment of the US Constitution

VII. PREVIOUS BANKRUPTCY MATTERS (For nature of suit 422 and 423, enter the case number and judge for any associated bankruptcy matter perviously adjudicated by a judge of this Court. Use a separate attachment if necessary)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** over \$10,000 **CHECK YES only if demanded in complaint: JURY DEMAND:** Yes No

IX. This case is not a refiling of a previously dismissed action. is a refiling of case number _____, previously dismissed by Judge _____

DATE 05/19/2011 SIGNATURE OF ATTORNEY OF RECORD
