

FILED

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION**

2016 JAN 27 AM 11:53  
CLERK, US DISTRICT COURT  
MIDDLE DISTRICT OF FL  
OCALA FLORIDA

R.W.,

Plaintiff,

v.

Case No. *5:16-CV-45-DC-10 PRL*

BRUCE A. KISER JR.,  
in his individual capacity,

Defendant.

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**COMPLAINT AND JURY DEMAND**

Introduction

R.W. was just 17 years old when, while in the custody of the Florida Department of Corrections, he was beaten and raped by a group of approximately six prisoners at Sumter Correctional Institution. The attack happened on the watch and in plain view of Officer Bruce A. Kiser Jr., who failed to prevent the beating, intervene after it began, or even report it. Over the course of almost 30 minutes, R.W. was stabbed dozens of times with broken pieces of fence and raped by at least one prisoner using a broom handle while Officer Kiser did nothing.

This attack was part of the ritual of initiation beatings for youthful offenders widely known to both guards and incarcerated youth as “Tests of Heart” or “T.O.H.” R.W. was attacked just weeks after entering prison for the first and only time. He is scheduled to be released from prison in 2017.

R.W. seeks redress for the suffering he endured as a result of Officer Kiser’s deliberate indifference to the substantial risk of serious harm he faced.

#### Jurisdiction

1. This action arises under the Eighth Amendment to the United States Constitution and 42 U.S.C. § 1983.
2. This Court has jurisdiction pursuant to 28 U.S.C. § 1331.
3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to this claim occurred within this Court’s district and the Ocala division.

#### Parties

4. R.W. entered the custody of the Florida Department of Corrections (“F.D.C.”) in May 2013 at the age of 17. He is classified as a “youthful offender” and currently incarcerated at Lancaster Correctional Institution.

5. Defendant Officer Bruce A. Kiser Jr., is a correctional officer employed by the F.D.C. He is sued in his individual capacity for damages. Defendant Officer Kiser, at all times material to this action, was assigned to work in “F Dormitory” at Sumter Correctional Institution (“Sumter”), supervising youthful offenders. Defendant Officer Kiser was responsible for the operation and supervision of F Dormitory; the enforcement of the relevant rules, regulations, policies and practices; and the safety of those under his watch.

#### Factual Allegations

6. When R.W. entered the F.D.C., he was classified as a “youthful offender.” The term “youthful offender” refers to youth who have been sentenced in accordance with the youthful offender sentencing scheme as outlined in Florida Statute § 958.04, or to youth who have been classified as such by the F.D.C. in accordance with Florida Statute § 958.11.

7. In general, prisoners classified as youthful offenders include those under age 25 whose sentences do not exceed 10 years. Many, like R.W., entered the F.D.C. as minors.

8. Many of these youth enter prison after being “direct filed,” that is, when prosecutors transfer a child’s juvenile charges from the juvenile

court system to adult criminal court. If convicted in adult court, a direct-filed youth may be sentenced to adult prison time, regardless of his age, and transferred to a prison within the F.D.C.

9. Violence and neglect pervade the F.D.C., making its prisons a particularly inappropriate place for youth. In 2013, 305 people died while incarcerated by the F.D.C. In 2014, that number increased to 346, including one young person who was reportedly attacked in a youthful offender prison, like R.W., and subsequently died, just six days after his twentieth birthday.

10. The majority of youthful offenders in the custody of the F.D.C. are incarcerated at one of three prisons: Sumter, Lancaster and Lake City Correctional Institutions.

11. At Sumter, R.W. was incarcerated in F Dormitory, an open-bay housing unit that held approximately 80 other prisoners, all classified as youthful offenders.

12. During a typical shift, only one officer was present on the housing unit with dozens of youth, even if two officers were technically assigned to be there. Sometimes, a second officer entered the unit briefly.

13. The officer on duty for the housing unit spent the majority of his time in the “bubble” or officer station, which is separated from the unit

by glass windows and a door. The station is situated so that an officer can easily observe happenings in the housing unit, including the bathroom area, from inside the station.

14. Shortly after arriving at Sumter, R.W. was told by other incarcerated youth that he would need to pay for his safety by purchasing items from the canteen and giving them to other prisoners, or he would have to fight another youth in a Test of Heart. He understood that refusal to do either would result in regular beatings, and that he would live under the constant threat of physical and sexual assault, from which the F.D.C. would not protect him.

15. In order to pay in the initiation system, a youth like R.W. must have money placed in his prison account so that he is able to purchase items like candy or chips from the prison canteen as payment. Because no amount of "payment" satisfies the continuing demands, the choice of paying or fighting is a false one.

16. The Test of Heart initiation system is part of the pervasive culture of brutality within the F.D.C. Guards are not only aware of the violence, but are often complicit in it. The youthful offender prisons are among the most violent in the Florida prison system.

17. When R.W. was warned of his impending Test of Heart, he believed that reporting the threat served no purpose and could even put him in added danger of retaliation for “snitching.” R.W. had heard of other youth who reported similar threats; guards responded by saying, “Welcome to prison,” and did nothing to prevent the violence. Until R.W. fought or paid for his safety, he would live under the constant threat of sexual or physical violence.

18. Like the majority of minors in the F.D.C., R.W. was indigent and did not have “protection” money to pay. Before his incarceration by the F.D.C., R.W. lived with his grandmother, who had since died.

#### **July 24: 2013: The Attack**

19. On July 24, 2013, R.W. was housed in F Dormitory at Sumter.

20. Defendant Officer Kiser was assigned to supervise F Dormitory on that day.

21. Shortly before 9:15 a.m. on July 24, 2013, R.W. entered the bathroom in F Dormitory to wash up.

22. In the bathroom area, a youth approached R.W. to confirm that R.W. would fight the youth to satisfy his Test of Heart. R.W. had no choice.

23. The youth slapped R.W., initiating the Test of Heart.

24. Unbeknownst to R.W., about six other youth were hiding in the bathroom area at the time. They joined in and began beating R.W.

25. Unbeknownst to R.W., this type of attack – multiple youth ganged up against one, often unsuspecting, youth – is typical of a Test of Heart.

26. R.W. was immediately overwhelmed and could not defend himself.

27. When the attack began, Defendant Officer Kiser was in the officer's station, which is adjacent to the bathroom area where the attack occurred. In order to enter the bathroom area, a person must walk directly past the officer's station, within the officer's view. The officer's station is made of glass walls so that an officer can observe the happenings in the unit from inside the station.

28. From the officer's station, Defendant Officer Kiser and others similarly situated can see clearly inside the bathroom area.

29. Defendant Officer Kiser could see clearly inside the bathroom area from the officer's station during the attack. Defendant Officer Kiser could see the multiple youth who entered the bathroom area, as well as those

who gathered outside the bathroom, near the officer's station, during the attack.

30. After the attack began, Defendant Officer Kiser looked at R.W. from the officer's station.

31. While the attack continued, Defendant Officer Kiser stepped outside the officer's station towards the youth gathered near the bathroom to watch the attack. Defendant Officer Kiser looked towards the bathroom area and then returned to the officer's station. He took no action.

32. Over the course of almost 30 minutes, R.W. was hit, choked, slammed on the floor, punctured dozens of times with two pieces of barbed wire broken from a fence, and raped with a broom handle that was inserted into his rectum.

33. The pieces of barbed wire had been sharpened into "pokers" for stabbing. Each piece was approximately eight inches long and had been fashioned into a stabbing tool with a handle for gripping.

34. Youth use a variety of weapons in the Tests of Heart, including pokers, broom handles, mop handles and homemade knives.

35. Guards know these weapons, specifically broom and mop handles, are used in Tests of Heart to beat youth and may be forcibly



inserted into a youth's rectum during the initiation attack. This constitutes rape under the Prison Rape Elimination Act. 42 U.S.C.A. § 15609(9)(A) ("The term 'rape' means ... sexual assault with an object ... forcibly or against that person's will.").

36. While the attack continued, one youth exited the bathroom area and picked up a broom that was resting near the bathroom entrance, by the officer's station. He took the broom into the bathroom. Defendant Officer Kiser remained in the officer's station and took no action.

37. One or more youth took the broom that had been brought into the bathroom area and used it to rape R.W., forcibly inserting the handle into his rectum.

38. R.W. was stabbed in his chest and back with the pokers well over 100 times.

39. At multiple times during this attack, R.W. was choked until he was rendered unconscious.

40. R.W.'s prison uniform was soaked with his blood and water from the bathroom.

41. During the attack, numerous other incarcerated youth walked in and out of the bathroom area. Some joined in beating R.W.; others watched

and laughed as his beating continued. Still others came in to use the bathroom and walked out when they were done.

42. Defendant Officer Kiser was in the officer's station throughout most of the attack.

43. About 30 minutes after the attack began, some youth left the bathroom area soaking wet from sweat and water in the bathroom. They walked directly by the officer's station, where Defendant Officer Kiser was located and could see them. Defendant Officer Kiser took no action.

44. Other youth left the bathroom, grabbed cleaning supplies, and went back into the bathroom.

45. Defendant Officer Kiser again exited the officer's station and looked towards the bathroom area. R.W. was still in the bathroom. Defendant Officer Kiser turned, walked the other way into the unit, then returned to the officer's station.

46. At no time did Defendant Officer Kiser investigate, intervene in, stop or report the attack.

47. When the attack ended, R.W. was weak and appeared to others to be in shock. He was in pain, injured, degraded, humiliated and scared. R.W. suffered numerous cuts and puncture wounds on his arms, back and

chest from the barbed wire that prisoners attacked him with. He received multiple contusions, and his neck was left red long after the attack, from injuries sustained when he was rendered unconscious. He was bleeding from his injuries and from his rectum.

48. R.W. borrowed clean clothes from another youth before leaving the bathroom area.

49. R.W. exited the bathroom more than 30 minutes after the attack began on Defendant Officer Kiser's watch.

50. R.W. did not report what had happened because he believed that reporting the Test of Heart would be futile, and he feared that it would lead to another beating in retaliation.

51. R.W. tried to appear as if nothing had happened, despite being in pain and having dozens of open puncture wounds on his body.

52. R.W. had cuts and redness around his neck. Youth encouraged him to use toothpaste to clog the wounds and stop the bleeding on his neck.

53. Defendant Officer Kiser never spoke to R.W. about the incident and never asked him about his well-being or whether he needed medical attention.

54. Several hours later, on his return to F Dormitory from the cafeteria for dinner, R.W. was stopped by Officer Vincent Cruz. Officer Cruz saw injuries on R.W.'s body and face. He sent R.W. to see medical staff.

55. R.W. was examined by a nurse, who noted dozens of wounds on his torso. He was kept in the medical unit for one night.

56. While in medical, R.W. was questioned by Captain David Boyd, an "Officer in Charge" at Sumter. When Captain Boyd learned that R.W.'s attack had been a Test of Heart, he asked R.W. specifically if he had been sexually assaulted because he knew that youth are often sexually assaulted with broom handles during Tests of Heart.

57. The Office of the Inspector General subsequently initiated an investigation.

58. On July 25 – one day after his attack – R.W. was removed from the medical unit and placed in confinement, which is a form of isolation.

59. While in confinement, R.W. was locked in a small cell that contained just a metal bed with a thin mattress, a toilet and a sink. There was one small window to the outside, but it was so dirty that R.W. could not see through it.

60. For the first few days in confinement, R.W. did not receive a sheet to cover his mattress, a blanket or any other bedding. While in confinement, R.W. was allowed outside of the cell only to shower, three times a week, and for three interviews with the investigator from the Inspector General's office. He was prohibited from interacting with other prisoners, going to recreation, attending GED classes or participating in any programming. R.W. never received his personal items, which included letters and legal mail.

61. According to F.D.C. regulations, prisoners placed in administrative confinement are allowed to keep their personal property. F.A.C. Rule 33-602.220(5)(c). Despite that, R.W. was denied his property and treated as if he were in punitive isolation.

62. R.W. remained in confinement at Sumter for several weeks. During that time, he never went outside.

63. R.W. was forced to endure these conditions even though he was the victim of a brutal attack and sexual assault. According to the Prison Rape Elimination Act, efforts must be made to avoid placing a person who has been the victim of a sexual abuse in prison in confinement. 28 C.F.R. §§ 115.68, 115.43. This added protection is based on the recognition that

victims of sexual abuse are at risk for greater trauma when placed in isolation.

64. At Sumter and throughout the F.D.C., victims of attacks are typically held in confinement following their assaults, despite the Prison Rape Elimination Act.

65. After a few days in confinement, R.W. sent his only clothes to the laundry unit. The clothes were not returned to him.

66. R.W. remained in isolation with nothing but his underwear for multiple days.

67. R.W. did not receive clothes until Robert Weeks, the investigator from the Inspector General's office, was scheduled to meet with him.

68. Mr. Weeks had investigated a Test of Heart attack in the Florida Department of Corrections before under similar circumstances.

69. Mr. Weeks reviewed facility video related to R.W.'s attack. He noted in his report "[p]ossible [a]dministrative issues" specifically related "to the lack of action taken by Officer Kiser while on duty" during the attack.

70. Defendant Officer Kiser was not disciplined for his role in this attack and continues to be employed as a prison guard by the F.D.C.

### **CAUSE OF ACTION**

#### **Eighth Amendment; 42 U.S.C. § 1983**

#### **Defendant Bruce A. Kiser Jr.**

71. Plaintiff repeats and realleges each preceding paragraph as if fully set forth herein.

72. Plaintiff's claim for relief is predicated upon 42 U.S.C. § 1983, which authorizes actions to redress the deprivation, under color of state law, of rights, privileges and immunities secured by the Eighth Amendment to the U.S. Constitution and the laws of the United States, and upon 42 U.S.C. § 1988, which authorizes the award of attorneys' fees and costs to prevailing plaintiffs in actions brought pursuant to 42 U.S.C. § 1983.

73. At all times material to this action, Defendant Officer Kiser was employed by the F.D.C. All actions performed by Defendant Officer Kiser were done under color of state law and constitute state action.

74. Defendant Officer Kiser knowingly failed to intervene, report or respond in any way to the beating, repeated puncture and stabbing, and rape of R.W. Defendant Officer Kiser allowed prisoners unsupervised access

to brooms and mops, despite knowing that these weapons are used in prison assaults.

75. Defendant Officer Kiser was aware that R.W. faced a substantial risk of serious harm, yet failed to do anything to stop it. Defendant Officer Kiser acted with deliberate indifference to the substantial risk of serious harm to R.W.

76. As a result of Defendant Officer Kiser's failure to intervene, report or respond in any way to the attack and sexual assault endured by R.W., R.W. suffered physical injury, severe emotional and mental distress, humiliation and degradation.

WHEREFORE, Plaintiff R.W., as a result of Defendant Officer Kiser's violation of the Eighth Amendment to the U.S. Constitution, respectfully requests that this Court award him all available damages, including punitive and compensatory, for the physical injury, severe emotional and mental distress, humiliation, and degradation he has suffered; any and all other damages suffered; attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and such other and further relief as the Court deems just and equitable.



**JURY TRIAL DEMAND**

Plaintiff respectfully demands trial by jury.

Respectfully submitted,

By: /s/ Miriam Haskell

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