COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 1998-03083

Notice sent
9/28/2009
G. A. J.
D. W. S.
Y. S. & R.
P. J. C.
B. T.
D. I. L.
R.M.G.R.
L.,C.,C.& P.
J. W. S.,JR.
M. J. H.
M. B. & J.
G. W. S.
J. W. C.
P.B.& L.
H. C. H.
N. A. W.
J. T. K.
P. O. C.
(sc)

EDGAR KELLY, & others[1]
vs.
THOMAS M. HODSGON,[2] & others[3]

MEMORANDUM OF DECISION AND ORDER ON PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

The plaintiffs now move for summary judgment on the sole issue of defendant Sheriff Hodgson's liability in his official capacity for alleged violations of the plaintiffs' constitutional rights. The Court has before it memoranda submitted in support of and in opposition to the motion. For the reasons set forth below, the plaintiffs' motion for partial summary judgment is GRANTED IN PART and DENIED IN PART.

PROCEDURAL HISTORY

The plaintiffs brought this action against the defendants, Thomas M. Hodgson ("Hodgson") and Michael T. Maloney ("Maloney") individually and in their official capacities as Sheriff of Bristol County and Commissioner of the Department of Corrections, respectively. The plaintiffs filed this suit individually and on behalf of a class of similarly situated individuals held at the Ash Street Bristol County Jail ("Ash Street Jail") and the Bristol County House of Correction (the "House of Correction") located in North Dartmouth. Hodgson is the Sheriff of Bristol County. The named

[1] Donna Medeiros, Radames Hernandez; Nance Rivera (as amended), Barry Booker (as amended), Kristopher Blackmar (as amended)
[2] Individually and in his official capacity as Sheriff of Bristol County
[3] Michael T. Maloney, individually and in his official capacity as Commissioner of the Department of Correction

plaintiffs represent three classes of incarcerated adults; (1) persons confined as pretrial detainees at the Ash Street Jail, (2) sentenced male inmates at the House of Correction, and (3) sentenced female inmates at the House of Correction.

In their complaint, the plaintiffs allege (1) that conditions at the House of Correction and the Ash Street Jail constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the U.S. Constitution (Count I), (2) that conditions at the Ash Street Jail constitute cruel and unusual punishment depriving pretrial detainees of equal protection and due process of law under the Fifth and Fourteenth Amendments of the U.S. Constitution, and (3) that conditions at the Ash Street Jail and the House of Correction constitute cruel and unusual punishment in violation of Articles 1, 10, 12, and 26 of the Massachusetts State Constitution. Plaintiffs also bring claims for failure to enforce Mass. Gen. L. ch. 124, §§ 1 et seq. against Maloney and for mandamus relief to require Maloney to remedy conditions that violate inmates' constitutional rights.

On October 2, 1998, this Court enjoined the defendants from triple bunking inmates, using floor mattresses, or requiring inmates to sleep in common areas at the House of Correction. This Court also directed the defendants to reduce the Ash Street Jail to single cell occupancy as well as cease the practice of reserving thirty cells for detention of local arrestees by November 16, 1998. On September 13, 2004, this Court amended its order to enjoin the defendants from depriving certain inmates of access to toilets. On December 23, 2004, finding that the plaintiffs had failed to produce evidence demonstrating that Maloney acted with deliberate indifference to the conditions of the plaintiffs' incarceration, this Court allowed Maloney's motion for summary judgment

and dismissed claims for damages against Maloney in his individual capacity. On September 24, 2008, this Court allowed in part and denied in part a motion for summary judgment filed by Hodgson. That summary judgment addressed Hodgson's individual liability and not the separate question of the defendant's liability in his official capacity as Sheriff of Bristol County.

Now, this matter is before the Court on plaintiffs' motion for summary judgment as to Hodgson's liability in his official capacity for the alleged constitutional harms. Specifically, the plaintiffs seek summary judgment as to liability on three issues; (1) the practice of keeping prisoners locked in "dry cells" without access to a toilet, (2) the use of portable bunks or "boats" to house prisoners on the floor, and (3) double-bunking prisoners at the Ash Street Jail and triple-bunking prisoners at the House of Correction. The issue of damages is not before the Court.

BACKGROUND

The relevant undisputed facts and disputed facts viewed in the light most favorable to the non-moving party, as revealed by the summary judgment record, are as follows:

On June 16, 1998, the plaintiffs brought this action against the defendants challenging Sheriff Hodgson's practice of double and triple bunking cells intended for single inmate occupancy, and requiring inmate to sleep in common areas and on floor mattresses known as boats. When the plaintiffs filed their complaint, both the Ash Street Jail and the House of Correction were overcrowded.

The Ash Street Jail's 205 single occupancy cells were double bunked and many cells were diverted for other uses, such as additional showers and attorney interview

rooms. Overcrowding issues were exacerbated by a policy requiring that thirty beds be reserved for regional arrestees. Additionally, parts of the Ash Street Jail had fallen into disrepair, including the gymnasium, which was left unused.

The House of Correction experienced similar overcrowding, housing 698 inmates in 309 cells. Built in 1990, the House of Correction was divided into the following twelve units: EA-Female Maximum; EB-Female Minimum; EC-Special Offenders (male); ED-Maximum (male); EE-Segregation; FA-Pretrial Maximum; FB-Pretrial Minimum; GA-, GB-, and GC-Sentenced Minimum; and BA- and BB-Sentenced Medium.

In addition to filing their complaint, on June 16, 1998, the plaintiffs moved for a preliminary injunction to enjoin certain practices of the defendants. On October 2, 1998, this Court granted the plaintiffs a preliminary injunction as follows:

> 1. There shall be no more triple bunking at the House of Correction in North Dartmouth after November 16, 1998. A cap of two (2) inmates per cell is required in all the units. Floor mattresses and "boats" shall no longer be used in this facility.
>
> 2. Inmates shall no longer be required to sleep in any common area of the House of Correction in North Dartmouth.
>
> 3. The Ash Street Jail shall be reduced to single-cell occupancy by November 16, 1998.
>
> 4. The Sheriff shall cease the practice of reserving 30 cells for the detention of local arrestees after November 16, 1998. All available cells at the Ash Street Jail, including those which can be renovated, shall be used, one inmate to a cell for the detention of already arraigned, pretrial detainees. In the event that

additional cells become available, after the needs and requirements of the courts are met, the Sheriff, in his discretion, may agree to house local arrestees on a case by case basis.[4]

Kelley v. Hodgson, Civil No. 983083C (Suffolk Super. Ct. Oct. 2, 1998) (Cratsley, J.) (the "1998 Preliminary Injunction").

On August 23, 2004, the plaintiffs moved to amend the 1998 Preliminary Injunction to enjoin the defendants from denying certain inmates access to toilets and hand sinks. At the House of Correction, all cells in the GA and GB units were "dry" cells, meaning that they did not contain toilets or sinks. Together GA and GB contained forty-eight cells, each with a capacity of two inmates per cell. While bathroom facilities were located nearby, inmates were locked in their cells between the hours of 10 p.m. and 7 a.m., and during the day for two two-hour blocks of time. Inmates who wished to use the bathroom were required to knock on their cell doors and to wait for a guard to arrive to escort them to the toilet. On September 13, 2004, this Court amended the 1998 Preliminary Injunction to require that all inmates confined to cells that are locked for any part of a twenty four hour period to have a working toilet or access to a toilet without the assistance of correctional staff. Kelley v. Hodgson, Civil No. 983083C (Suffolk Super. Ct. Sept. 13, 2004) (Cratsley, J.) (the "2004 Preliminary Injunction").

Hodgson took over as Bristol County Sheriff in 1997, and implemented a number of improvements at both the Ash Street Jail and the House of Correction. By 2008, the House of Correction had been accredited by the American Correction Association.

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[4] On November 13, 1998, a single member of the Appeals Court (Armstrong, J.) vacated the portion of the Court's order enjoining Hodgson from reserving thirty cells for local arrestees.

During the interim time period, however, the House of Correction continued to face challenges, with the Massachusetts Department of Public Health citing numerous violations as recently as 2007.

In 2008, Hodgson retained an expert who submitted a report declaring that the House of Correction satisfied constitutional requirements and thus he moved for summary judgment on the grounds (1) that the plaintiffs' claims were moot, (2) that he is protected by qualified immunity, and (3) that the plaintiffs' complaint should be dismissed for lack of prosecution. On September 24, 2008, this Court allowed in part and denied in part Hodgson's motion for summary judgment.

Now the plaintiffs have moved for summary judgment solely on the grounds that the defendant, in his official capacity as Bristol County Sheriff, is liable for violating the Eighth Amendment and Fourteenth Amendment rights of the plaintiff.

DISCUSSION

I. Summary Judgment Standard

Summary judgment is appropriate if there exists no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Mass. R. Civ. P. 56(c); Cassesso v. Comm'r of Corr., 390 Mass. 419, 422 (1983); Cmty Nat'l Bank v. Dawes, 369 Mass. 550, 553 (1976). It is the moving party's burden to demonstrate affirmatively the absence of a triable issue, and that the summary judgment record entitles him to judgment as a matter of law. Pederson v. Time, Inc., 404 Mass. 14, 16-17 (1989). The moving party may satisfy this burden either by submitting affirmative evidence that negates an essential element of the opposing party's case or by demonstrating that the opposing party has no reasonable expectation of proving an essential element of his case

at trial. Flesner v. Technical Commc'ns Corp., 410 Mass. 805, 809 (1991); Kourouvacilis v. Gen. Motors Corp., 410 Mass. 706, 716 (1991). In ruling on a summary judgment motion, the court may rely on the court record, including admissions made by either party in brief filed with this court since the start of litigation. Cf. White v. Peabody Constr. Co., 386 Mass. 121, 126 (1982) (holding judge may consider admissions by counsel during oral argument on the motion).

II. Timeliness of Plaintiff's Motion for Summary Judgment

The defendant argues that the plaintiffs' motion for summary judgment should be denied because it is untimely. The defendant does not cite to any authority supporting his position, but merely asserts that the plaintiffs waived their right to move for summary judgment by previously arguing that the defendant's separate motion for summary judgment was time-barred because it was filed in violation of the time standards set forth in Massachusetts Superior Court Standing Order 1-88.

This Court holds that the plaintiffs' motion is timely. First, Mass. R. Civ. P. 56 does not include a time limitation. Rule 56(a) provides that a claimant may move for summary judgment "*at any time after* the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party." Id. The drafters of the rule intended for courts to resolve summary judgment motions made "at any time the court is made aware" of the absence of any genuine issue of material fact. Mass. R. Civ. P. 56 (1973 Reporters' Notes). Second, Massachusetts Superior Court Standing Order 1-88 does not impose a limitations period for filing motions for summary judgment. Finally, it is within the court's discretion whether to allow the motion for summary judgment. Consistent with the plain language of the rule, I hold that the

plaintiff's motion is timely filed.

III. Eighth Amendment

The plaintiffs' claims fall under the Eighth Amendment. First, section A *infra* sets out the legal standard for applying the Eighth Amendment's prohibition of cruel and unusual punishment. Second, section B *infra* applies the facts of this case, holding there exists no genuine issue of material fact as to whether the defendant's past practices of locking prisoners in cells without immediate access to toilets constituted unconstitutional cruel and unusual punishment. In addition, there is no genuine issue of material fact that the practice of housing prisoners on floors and double- and triple-bunking prisoners violated the Eighth Amendment. For the reasons more fully set forth below, the plaintiffs' motion for summary judgment is granted regarding these practices.

A. Constitutional Standard

The Eighth Amendment to the United States Constitution proscribes cruel and unusual punishment of convicted prisoners. In order to show a violation of this right, a plaintiff must show "deliberate indifference" on the part of the defendant. Ahearn v. Vose, 64 Mass. App. Ct. 403, 414 (2005). Specifically, in order to prevail on summary judgment, the plaintiff must show that there exists no genuine issue of material fact as to the following elements: "(1) An unusually serious risk of harm . . . (2) defendant's actual knowledge of (or, at least, willful blindness to) that elevated risk, and (3) defendant's failure to take obvious steps to address that known, serious risk." Id. at 414.

i. Unusually Serious Risk of Harm

To determine whether an unusually serious risk of harm exists "requires more than a scientific and statistical inquiry into the seriousness of the potential harm and the

likelihood that such injury to health will actually be caused by exposure to [the condition]." Helling v. McKinney, 509 U.S. 25, 36 (1993). It also requires the court to determine "whether society considers the risk that the prisoner complains of to be so grave that it violates contemporary standards of decency" such that anyone would be unwilling to endure the condition. Id.

First, as to dry-celling, "Confinement [that] requires persons to live in close proximity to their own human waste and that of others" constitutes cruel and unusual punishment violating the Eighth Amendment. See Michaud v. Sheriff of Essex County, 390 Mass. 523, 529 (1983); Ahearn, 64 Mass. App. Ct. at 414 (stating that subjecting prisoners to a squalid waste disposal system is unconstitutional). In Richardson, the Supreme Judicial Court declared, "This court, as well as several others, has held that the failure to provide an inmate with a toilet that can be flushed from within the inmate's cell constitutes cruel and unusual punishment in violation of the Eighth Amendment." Richardson, 407 Mass. at 463 (internal citations omitted).

Second, as to using portable bunks or "boats" to house prisoners on the floor, the plaintiffs cite a number of cases from other jurisdictions holding these practices unconstitutional. See, e.g., Union County Jail Inmates v. DiBuono, 713 F.2d 984, 994 (3d Cir. 1983); Lareau v. Manson, 651 F.2d 96, 107-08 (2d Cir. 1981); Balla v. Bd. of Corrections, 656 F. Supp. 1108, 1118 (D. Idaho 1987). The defendant fails to cite any cases supporting his assertion that housing inmates on the floor does not violate the Eighth Amendment.

Third, as to double- and triple-bunking prisoners, the Massachusetts Code of Regulations bars double-bunking eighty-four square foot cells. 105 Code Mass. Regs. §

451.321 (requiring that in areas "where inmates are usually locked in for greater than ten hours per day," the cell must "contain eighty (80) square feet of floor space for a single inmate").And, "[f]or inmates usually locked in for less than ten hours per day" the cell must contain "at least seventy (70) square feet of floor space for a single inmate." Id. The mere failure to conform to state minimum standards of confinement does not *per se* establish a constitutional violation as those standards may dictate far better conditions than the constitution mandates. Richardson, 407 Mass. at 460 (quoting Strachan v. Ashe, 548 F. Supp. 1193, 1202 (D. Mass. 1982)).

Nevertheless, courts in other jurisdictions have found constitutionally impermissible conditions where prison officials double-bunked cells. See French v. Owens, 777 F.2d 1250, 1253 (7th Cir. 1985) (finding cruel and unusual conditions where double-celling left each inmate with twenty-four square feet of space); Toussaint v. Yockey, 722 F.2d 1490 (9th Cir. 1984) (upholding a preliminary injunction that enjoined double-bunking of cells less than fifty square feet); Lareau, 651 F.2d at 96 (holding that double-bunking a sixty-five square foot cell was improper); cf. Richardson, 407 Mass. at 465 (1990) (suggesting that double-bunking of cells that resulted in forty-five square feet of floor space would constitute cruel and unusual punishment).

ii. **Actual knowledge**

"The second prong of the Eighth Amendment test is subjective and addresses whether the defendant[] had actual knowledge of (or were willfully blind to) the substantial risk of harm to the health of the plaintiffs." Ahearn, 64 Mass. App. Ct. at 415. So, in order to grant summary judgment in the plaintiffs' favor, the record must also show that there is no genuine dispute as to whether the defendant had actual knowledge

of the serious health risk posed by the overcrowding and dry cells. "'[A] fact finder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious.'" Id. at 416 (quoting Farmer v. Brennan, 511 U.S. 825, 842 (1994)).

iii. **Failure to take obvious steps to alleviate harms**

In order to grant summary judgment in favor of the plaintiffs, the record must also show that the defendant failed to take obvious steps to address a substantial risk to the plaintiffs' health. See, e.g., Clancy v. McCabe, 441 Mass. 311, 318 (2004) (requiring a showing that defendant failed "to take easily available measures to address the risk"). The Massachusetts Appeals Court, in Ahearn, described prison officials' duties in this regard:

> Prison officials, working in these circumstances, understand that they are *not* liable for much of the harm that the system causes *only* because much of that harm involves matters beyond their individual control – appropriations decisions, for example, are in the hands of the legislature . . . Yet that fact, in the context of an unconstitutionally dangerous system, should make reasonable officials increasingly sensitive to the need to avoid those acts or omissions, *within* their control, that might make matters worse.

Ahearn, 64 Mass. App. Ct. at 418 (quoting Cortes-Quinones v. Jimenez-Nettleship, 842 F.2d 556, 561-62 (1st Cir. 1987).

The Supreme Judicial Court has also rejected the "notion that an arm of the State may be allowed to violate an individual's constitutional rights because funds have not been appropriated to remedy the wrong." Michaud, 390 Mass. at 529.

B. Analysis

The plaintiffs' assertion of liability relies on findings that the defendant's admitted practice of (1) locking prisoners in cells without immediate access to toilets, (2)

housing prisoners on the floor, and (3) housing multiple prisoners in small cells violated the Eighth Amendment. My findings are as follows: First, there is no dispute that the defendant engaged in all of these practices. Second, there is no dispute that these practices posed unusually serious health risks. Third, there is no dispute that the defendant had actual knowledge of these serious health risks. Fourth, there is no dispute that the defendant failed to take obvious steps to alleviate the serious health risks posed by dry cells prior to 2004 and overcrowding prior to 1998.

In light of these findings, as set forth more fully below, this Court holds that there exists no genuine issue of material fact as to the defendant's liability in his official capacity for violating the plaintiffs' Eighth Amendment rights in several respects. The plaintiffs' motion in this regard is Allowed. For purposes of clarity, this holding applies only to the issue of liability of the defendant in his official capacity. Issues of the extent of liability and damages are reserved for later determination.

i. Dry-celling

Here, it is undisputed that sentenced inmates in the GA and GB units of the House of Correction were locked inside their cells overnight and for periods of time during the day without free access to bathrooms and hot and cold running water. The defendant has conceded on the record that prisoners in the House of Correction were locked in their cells without access to a working toilet and hand-washing sink with hot and cold running water. In the 2004 Preliminary Injunction, this Court noted, based on a view of the premises, that "it was apparent, and the defendants freely concede, that inmates in two units at the [House of Correction in] North Dartmouth, (units 'GA' and 'GB') are locked in their cells for significant parts of each day and through most of the night, and that the

cells in GA and GB are all 'dry' cells, meaning they do not contain toilets or sinks." 2004 Preliminary Injunction, at 1.

The defendant argues that the doors on the cells in question were locked "for safety reasons after a riot where the inmates in those units breached the security of the units." See Memorandum of Defendant Sheriff Thomas M. Hodgson in Opposition to Plaintiffs' Motion for Partial Summary Judgment, at 14. In addition, the defendant has argued that when the doors were locked at night, corrections officers opened them on request. In this Court's 2004 Preliminary Injunction, I pointed out that bathroom logs submitted by the defendant showed that each inmate requesting access to the bathroom during this time period "was released from his cell and allowed access to the bathroom within one to five minutes of his request." 2004 Preliminary Injunction, at 2. These logs recorded the bathroom requests of prisoners for only one night. The dry-cell policy however, was in place for multiple years beginning in 2001 and ending in 2004.

A single document stating that on one day guards recorded releasing prisoners to use toilets outside their cells is simply too little to create a triable issue of fact about the constitutional dry cells violations that all agree lasted over three plus years. Not only do the applicable cases hold that the constitution requires working toilets and sinks in each prisoner's cell, but one day of release data cannot rebut the agreed upon practice from 2001 to 2004.

The summary judgment record contains multiple affidavits submitted by the plaintiffs from prisoners disputing the defendant's argument that access to toilets was promptly granted. These affidavits recount long wait times before guards granted access to toilets, and include statements that prisoners were forced to urinate and defecate within

their cells because of the long wait times. Because the defendants have failed to rebut the evidence disclosed by the affidavits of the prisoners, there exists no genuine issue of material fact as to the defendant's violation of prisoners' right to be free from cruel and unusual punishment in violation of the Eighth Amendment.

ii. Porta-bunks and "boats"

It is undisputed that prisoners at the House of Correction were housed three to a cell, on the floor, and in common areas until the 1998 Preliminary Injunction. In 1998, the defendants acknowledged that the facility "has been overcrowded for some time. As a result, inmates at that facility have been sleeping on porta-bunks and floor mattresses." See Memorandum of Defendant Hodgson in Opposition to Plaintiff's Motion for Preliminary Injunction, Aug. 12, 1998, at 11. In addition, this Court observed prisoners housed on the floor during its view of the House of Correction on September 11, 1998. See 1998 Preliminary Injunction, at 7, 14.

There exists no genuine issue of material fact as to whether the defendant failed to take obvious steps to alleviate the serious health risk posed by housing prisoners on the floor. During my initial view of Ash Street Jail in 1998, I saw a number of unused cells that could be repaired and used to house prisoners. The defendant has failed to provide any contrary evidence, and the defendant cannot merely argue that the lack of funds or the existence of overcrowding statewide justified the policy. Because the facts are undisputed and case law holds that forcing prisoners to sleep on the floor violates the Eighth Amendment, the plaintiffs' motion for summary judgment in this regard is granted.

iii. Double-bunking and Triple-bunking

It is undisputed that, prior to this Court's issuing the 1998 Preliminary Injunction, severe overcrowding occurred at the House of Correction and at the Ash Street Jail. Indeed, the defendant acknowledged in 1998 that, "Cells designed for two inmates have been triple-bunked." See Memorandum of Defendant Hodgson in Opposition to Plaintiff's Motion for Preliminary Injunction, Aug. 12, 1998, at 11. In addition, according to a Massachusetts Department of Public Health Inspection Report conducted in 1997 (the "DPH Inspection Report"), triple-celling left only 28 square feet per prisoner before taking into account the bed, "boat", sink or toilet. After subtracting for those items, each prisoner was left with at most 21.9 square feet of unencumbered space.

The defendant has also admitted that it knew of the severe overcrowding. In a letter written on behalf of the defendant in 1997 in response to the DPH Inspection Report, the defendant admits, "Regarding the severe overcrowding, please be assured the administrative and security staff is aware of the physical and mental health problems that stem from such conditions and are working hard to address these problems." See Exhibit 3 to Memorandum in Support of Plaintiff's Motion for Partial Summary Judgment.

There also exists no genuine issue of material fact as to whether the defendant failed to take obvious steps to alleviate the health risk of double- and triple-celling prisoners. During my initial view of Ash Street Jail in 1998, I saw a number of unused cells that could be repaired and used to house prisoners. The defendant has failed to provide any contrary evidence, and the defendant cannot merely argue that the lack of funds or the existence of overcrowding statewide justified the policy. Because the facts are undisputed and case law holds that double- and triple-celling under the circumstances

described herein violates the Eighth Amendment, the plaintiffs' motion for summary judgment in this regard is granted.

IV. Fourteenth Amendment Rights of Pretrial Detainees

The plaintiffs move in their summary judgment motion for a declaration of the defendant's liability for violating the due process rights of pretrial detainees. First, section A *infra* sets out the legal standard for applying the Due Process Clause prohibition against punishing pretrial detainees. Second, section B *infra* applies the facts of this case, holding that the defendant's past practices of subjecting pretrial detainees to sleeping on the floor, overcrowding, and double celling at the Ash Street Jail constituted punishment in violation of due process. There is no evidence, however, that the defendant subjected pretrial detainees to custody in dry cells. So, as to this practice, the plaintiff's motion for summary judgment is Denied. For purposes of clarity, this holding applies only to the issue of liability of the defendant in his official capacity. Issues of the extent of liability and damages are reserved for a later date.

A. Constitutional Standard

The Due Process Clause of the Fourteenth Amendment prohibits "punishment" of individuals who are detained by the government prior to sentencing. Richardson v. Sheriff of Middlesex County, 407 Mass. 455, 461 (1990) (quoting Bell v. Wolfish, 441 U.S. 520, 535 n. 16 (1979)). A "restriction or condition" will be deemed punishment if it "is not reasonably related to a legitimate goal." Id.

Unlike convicted prisoners, who may be punished so long as the punishment is not cruel and unusual pursuant to the Eighth Amendment of the U.S. Constitution, pretrial detainees may not be punished at all. Id. at 461 (stating that "under the Due

Process Clause, a [pretrial] detainee may not be punished prior to an adjudication of guilt in accordance with due process of law") (citing Bell, 441 U.S. at 535 n. 16). Thus, the question before this Court is whether the challenged policy, practice or condition constitutes punishment. Id. "This inquiry turns on whether the conditions of confinement are reasonably related to a legitimate governmental objective. If a restriction or condition is not reasonably related to a legitimate goal - if it is arbitrary or purposeless – a court may permissibly infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees." Id.

With respect to whether overcrowding constitutes punishment, "it must be shown that the overcrowding subjects the detainee over an extended period of time to genuine privations and hardship not reasonably related to a legitimate governmental objective." Id. (citing Lareau, 651 F.2d at 103). As to the pretrial detainee sleeping arrangements, the use of floor mattresses is punishment, irrespective of the number of days that a prisoner was confined. Id. at 462. Furthermore, crowding detainees into common areas, particularly those designed for other purposes, may constitute punishment. Id. at 464.

Richardson is the leading Massachusetts case dealing with this issue. In that case, the plaintiff class of pre-trial detainees claimed violations of their due process rights in the condition of their confinement. The case was submitted on agreed-upon facts. The trial court found that the defendant violated the pre-trial detainees' due process rights by forcing them to sleep on floor mattresses and sometimes directly on the floor. The judge also found a violation of pre-trial detainees' due process rights when they were not provided with access to a toilet that could be flushed from the inside. Id. at 463. Finally, the Richardson court found due process violations in the double bunking of the plaintiffs

that reduced the floor area to "as little as approximately forty-two square feet." Id. at 465.

After determining that the plaintiffs were subjected to genuine privations and hardship, the Supreme Judicial Court considered the defendant's argument that the prison conditions were reasonably related to the goal of managing the corrections facility. In particular, the defendant "cite[d] as his principal objective the need to keep the facility operating so as to detain unbailworthy defendants awaiting trial." Id. at 466. The high court rejected the defendant's argument as overbroad and, citing legitimate governmental interests as measures necessary to the security and effective maintenance of the facility, held that a "basically economic motive cannot lawfully excuse the imposition on the presumptively innocent [pretrial detainees] of genuine privations and hardship over any substantial period of time." Id. (internal citations omitted).

B. Analysis

My findings are as follows: First, there is no dispute that the defendant (1) engaged in the practice of placing pretrial detainees on the floor and in porta-bunks, and (2) permitted overcrowding, as well as double bunking at the Ash Street Jail, to exist for pretrial detainees. Second, there is no dispute that these practices constituted punishment as a matter of law. In light of these findings, I hold that the defendant is liable in his official capacity for violating the plaintiffs' rights under the Due Process Clause. The plaintiffs' motion in this regard is granted in several respects. For purposes of clarity, this holding applies only to the issue of liability of the defendant in his official capacity. Issues of damages are reserved for later determination.

i. Dry-cells

The plaintiffs argue in their motion that they are entitled to summary judgment

because the defendants held pretrial detainees in dry cells. The record, however, does not include any evidence that the defendant held pretrial detainees in dry cells. Therefore, summary judgment based on this practice is Denied.

ii. Porta-bunks and "boats"

The plaintiffs state in their motion that it is undisputed that the defendants housed pretrial detainees "on the floor in plastic 'boats' or mattresses until this Court's 1998 injunction." Memorandum in Support of Plaintiff's Motion for Partial Summary Judgment, at 12. The plaintiffs cite the 1998 Preliminary Injunction and the defendant's memorandum filed in opposition. A review of those documents shows that the defendant has indeed admitted that pretrial detainees were housed on the floor as alleged by the plaintiffs at some point prior to the 1998 preliminary injunction order. Because, under Richardson, placing pretrial detainees on the floor constitutes punishment, there exists no genuine issue of material fact as to the defendant's liability for this practice. Therefore, the plaintiffs' motion for summary judgment as to the defendant's liability for violation of the plaintiff pretrial detainees' due process rights in this regard is granted.

iii. Double-bunking and triple-bunking

The overcrowding conditions at Ash Street Jail and House of Correction, including double-bunking at the Ash Street Jail prior to the 1998 Preliminary Injunction are undisputed. Because these conditions constitute Eighth Amendment violations, they also clearly violated the constitutional rights of those pretrial detainees subjected to the same conditions. Therefore, the plaintiffs' motion for summary judgment as to the defendant's liability for violation of the plaintiff pretrial detainees' rights in this regard is granted.

III. Defendant's Other Arguments

First, the defendant argues that the plaintiffs' "dry cell" claims are not properly before the court because the conduct occurred after the complaint was initially filed, that the plaintiffs failed to file a supplemental pleading adding the dry cell claims to the case and that the plaintiff have failed to exhaust their administrative remedies. Therefore, the defendant says, the claims are barred pursuant to Mass. Gen. L. ch. 127, § 38F.

Here, the plaintiffs' initial complaint alleged general violations of constitutional rights due to unhealthy conditions in prisoners' cells. The specific issue of dry cells was first raised when the plaintiffs filed for and obtained an emergency preliminary injunction in 2004 to stop the practice. At the time, the defendant did not object to the plaintiffs' introduction of the issue on administrative exhaustion grounds and failed to raise the affirmative defense of exhaustion of remedies. Now, five years later, in the final section of his Sur-Reply to the Plaintiff's Reply to the Defendants Opposition to the Plaintiffs' Motion for Partial Summary Judgment, the defendant argues that the plaintiffs' dry cell claims must be stricken. I feel that any defense objections to plaintiffs raising this issue, now that it has been thoroughly briefed, argued, decided, and complied with by the defendant at the Preliminary Injunction Stage, have been waived.

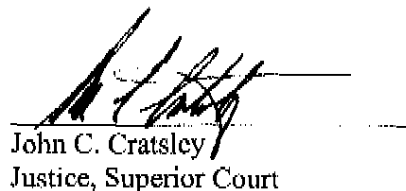
Second, the defendant argues that the plaintiffs' summary judgment motion should be denied because he is protected by qualified immunity. A suit against "a public servant 'in his official capacity' imposes liability on the entity that he represents." Brandon v. Holt, 469 U.S. 464, 471 (1985). A municipal entity "is not entitled to the shield of qualified immunity from liability under § 1983." Id. at 473; see also Jarrett v. Town of Yarmouth, 331 F.3d 140 (1st Cir. 2003) ("As a general rule . . . a court entering

judgment against municipal officers in their official capacities is entering judgment against municipal officers in their official capacities is entering judgment against the municipality as well."); Nereida Gonzalez v. Tirado-Delgado, 990 F. 2d 701, 705 (1st Cir. 1993) ("when a plaintiff seeks equitable relief from a defendant in his capacity as an officer of the state, qualified immunity is not a viable defense").

Here, the plaintiffs filed their complaint against the defendant in his official capacity and have moved for summary judgment on the defendant's liability in his official capacity for admitted past practices at the Ash Street Jail and House of Correction. Because the defendant is being sued in his official capacity, the doctrine of qualified immunity does not apply here.

CONCLUSION

For the foregoing reasons, the plaintiffs' motion for partial summary judgment regarding the defendant's liability in his official capacity for violations of the plaintiffs' Eighth Amendment and Fourteenth Amendment rights is GRANTED in part and DENIED in part, all as outlined in this opinion.



John C. Cratsley
Justice, Superior Court

Date: September 24, 2009