

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

ANDRE D. COOLEY,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. _____
	:	
FORREST COUNTY SHERIFF'S	:	
DEPARTMENT; BILLY McGEE, in his	:	
individual and official capacity as Forrest	:	
County Sheriff; CHARLES BOLTON,	:	
in his individual and official capacity as	:	
Chief of Corrections; and DONNELL	:	
BRANNON in his individual and official	:	
capacity as Staff Sergeant of Jail	:	
Operations,	:	
	:	
Defendants.	:	

COMPLAINT

Plaintiff ANDRE D. COOLEY (“Plaintiff”), through his undersigned attorneys, brings this Complaint against Defendants FORREST COUNTY SHERIFF’S DEPARTMENT (the “Sheriff’s Department”); BILLY McGEE, in his individual and official capacity as Forrest County Sheriff; CHARLES BOLTON, in his individual and official capacity as Chief of Corrections; and DONNELL BRANNON in his individual and official capacity as Staff Sergeant of Jail Operations; and alleges as follows:

NATURE OF ACTION

1. This is a civil rights action brought by Plaintiff, Andre D. Cooley, who had an unblemished record as a corrections officer at the Forrest County Sheriff’s Department until his

supervisors discovered his sexual orientation and terminated him based on animus against gay people.

2. On June 14, 2010, while Mr. Cooley was in his home, off-duty and out of uniform, his boyfriend became physically violent, prompting Mr. Cooley to call 911 for help. The official police report of the incident lists Mr. Cooley as the “victim” of the domestic violence. *See* Ex. A at 1. No charges or disciplinary proceedings have ever been filed against Mr. Cooley accusing him of domestic violence or any other misconduct.

3. One of the officers who responded to the call was Defendant Charles Bolton, the Chief of Corrections. In response to Chief Bolton’s questions, Mr. Cooley’s boyfriend disclosed that he and Mr. Cooley were in an intimate relationship.

4. Upon learning that Mr. Cooley was gay and in a same-sex relationship, Chief Bolton immediately told Mr. Cooley not to come back to work before reporting to his immediate supervisor. When he did report to his supervisor, Mr. Cooley was told he was suspended indefinitely.

5. The next day, Defendant Donnell Brannon, Staff Sergeant of Jail Operations, informed Mr. Cooley that the Sheriff’s Department had terminated him because of “the type of situation” in which Mr. Cooley had been involved. Mr. Cooley asked Staff Sergeant Brannon whether he was being fired because he is gay. After a brief pause, Staff Sergeant Brannon responded, “Yes.”

6. On information and belief, Staff Sergeant Brannon subsequently told Mr. Cooley’s co-workers that “Cooley was fired because he turned out to be a faggot.”

7. Mr. Cooley attempted to appeal his termination by repeatedly contacting Defendant Billy McGee, who, as Sheriff, has final policymaking authority for the Forrest County

Sheriff's Department. With full knowledge that Mr. Cooley had been terminated because he was a gay man and in a same-sex relationship, Sheriff McGee ratified and acquiesced in Mr. Cooley's unconstitutional termination.

8. The Sheriff's Department has never provided Mr. Cooley with a written statement of the grounds for his termination.

9. The Sheriff's Department subsequently contested Mr. Cooley's application for unemployment benefits by alleging that Mr. Cooley was terminated because he "displayed inappropriate conduct and behavior while off duty, unacceptable for an officer." *See* Ex. E at 1. After holding an evidentiary hearing, an administrative law judge in Mississippi's Department of Employment Security rejected the Sheriff Department's assertion and concluded that: "The claimant was discharged, but not due to misconduct. The employer has not provided substantial evidence that the claimant was involved in misconduct of any sort." *See* Ex. F at 3.

10. The Sheriff's Department and its agents terminated Mr. Cooley on account of his sexual orientation and same-sex relationship, which have no bearing on his ability to perform his job as a correctional officer. Defendants' conduct lacked any rational relationship to a legitimate state interest -- much less, a substantial or compelling one. It was based on animus against gay people, and in violation of Mr. Cooley's equal protection and substantive due process rights under the Fourteenth Amendment.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 28 U.S.C. §§ 1343(a)(3) and (4).

12. Pursuant to 28 U.S.C. §§ 1391(b)(2), venue in this Court is proper because a substantial part of the events giving rise to the claim occurred in this district.

PARTIES

13. Plaintiff Andre D. Cooley is a resident of Hattiesburg Mississippi. Mr. Cooley was employed by the Forrest County Sheriff's Department as a Deputy Sheriff Corrections Officer from November 2009 until June 15, 2010.

14. Defendant Forrest County Sheriff's Department is a division of Forrest County, a municipality acting under color of Mississippi state law. Pursuant to Miss. Code. § 19-2-9(2), the Sheriff's Department has elected to adopt and maintain an independent system of personnel administration.

15. Defendant Billy McGee is, and was at all times relevant to this Complaint, the Sheriff of Forrest County. Pursuant to Miss. Code. § 19-2-9(2), Sheriff McGee has final policymaking authority with respect to employment decisions made by the Sheriff's Department.

16. Defendant Charles Bolton is, and was at all times relevant to this Complaint, the Chief of Corrections for the Forrest County Sheriff's Department. On information and belief, Chief Bolton's immediate superior officer was Sheriff McGee.

17. Defendant Donnell Brannon is, and was at all times relevant to this Complaint, the Staff Sergeant of Jail Operations for the Forrest County Sheriff's Department. On information and belief, Staff Sergeant Brannon's immediate superior officer was Chief Bolton.

FACTUAL BACKGROUND

Mr. Cooley's Educational and Employment Background

18. Since he was born, Mr. Cooley was raised through the foster-care system. In recognition of his academic performance and leadership potential, Mr. Cooley has been awarded competitive internships from the Orphan Foundation for America and the Congressional Foster

Youth Internship Program. Mr. Cooley chose to pursue employment as a correctional officer for juvenile detainees in order to serve as a mentor and positive role model for teenagers in trouble.

19. Mr. Cooley graduated from the University of Southern Mississippi in 2009 with a bachelor's degree in administration of justice. From approximately July 2009 through November 2009, Mr. Cooley was employed as a correctional officer at the Jones County Sheriff's Department in Jones County, Mississippi, where Mr. Cooley maintained an unblemished service record.

Mr. Cooley's Hiring and Job Performance at the Forrest County Sheriff's Department

20. In November 2009, while still employed by Jones County, Mr. Cooley submitted an application to work as a correctional officer for the Forrest County Sheriff's Department. After submitting a resume, Mr. Cooley received a phone call from Staff Sergeant Brannon. Brannon said that Mr. Cooley would be "a good fit" for the Sheriff's Department and told Mr. Cooley to interview with Captain Chris Selman, who would be Mr. Cooley's immediate supervisor in the juvenile corrections division of the Sheriff's Department.

21. During the job interview, Captain Selman told Mr. Cooley that his resume was better than the resume of any other candidate that had applied for the job. Captain Selman said that Mr. Cooley was a valuable hire because he already had experience as a correctional officer.

22. Mr. Cooley never received a negative performance evaluation or any disciplinary reprimands while working at the Sheriff's Department. After working at the Sheriff's Department for approximately two months, Mr. Cooley was promoted to the position of senior correctional officer. In that capacity, Mr. Cooley was in charge of a "shift" at the juvenile facility and supervised more junior correctional officers.

Chief Bolton's Discovery of Mr. Cooley's Sexual Orientation and Termination of Mr. Cooley

23. Mr. Cooley is a gay man. Although Mr. Cooley disclosed his sexual orientation to a small number of co-workers, he was not "out of the closet" at work. Mr. Cooley did not disclose his sexual orientation to Staff Sergeant Brannon, Chief Bolton, or Sheriff McGee.

24. On June 14, 2010, at approximately 3:20 in the afternoon, Mr. Cooley's boyfriend became physically violent at Mr. Cooley's house. Mr. Cooley called 911 for assistance. At the time the incident occurred, Mr. Cooley was off-duty and out of uniform.

25. One of the officers who responded to Mr. Cooley's emergency phone call was Chief Bolton. When Mr. Cooley's boyfriend revealed to Chief Bolton that he and Mr. Cooley were in a relationship, Chief Bolton ordered Mr. Cooley to report to his supervisor before returning to work.

26. Shortly thereafter, at approximately 4:15 in the afternoon, Mr. Cooley reported to his immediate supervisor, Captain Selman. Captain Selman told Mr. Cooley that he had spoken with Chief Bolton and that Chief Bolton had ordered that Mr. Cooley be suspended indefinitely. Mr. Selman told Mr. Cooley that, according to Chief Bolton, a charge of domestic violence was pending against him. Selman said that once the charge was dropped, Mr. Cooley would be reinstated. Mr. Selman advised Mr. Cooley that another employee at the Sheriff's Department had been suspended based on charges of domestic violence and was reinstated after the charges were dropped.

27. Chief Bolton's statements to Captain Selman were false. In fact, no charges have ever been filed against Mr. Cooley accusing him of domestic violence or any other misconduct. The police report of the incident at Mr. Cooley's house lists Mr. Cooley as the "victim" of the

domestic violence precipitated by his boyfriend and states that Mr. Cooley acted in self-defense. A copy of the police report is attached as Exhibit A.

28. On June 15, 2010, after obtaining a copy of the police report, which showed that he had engaged in no misconduct, Mr. Cooley attempted to contact Chief Bolton in order to learn the true reason why he was suspended. Chief Bolton's secretary informed Mr. Cooley that she would tell Chief Bolton that Mr. Cooley wished to see him.

29. Later that afternoon, at approximately 4:00, Mr. Cooley received a telephone call from Staff Sergeant Brannon. Staff Sergeant Brannon informed Mr. Cooley that he was being permanently terminated because of "the type of situation" in which Mr. Cooley had been involved. Mr. Cooley asked Staff Sergeant Brannon whether he was being fired because he is gay. After a brief pause, Staff Sergeant Brannon responded, "Yes."

30. On information and belief, Staff Sergeant Brannon subsequently told Mr. Cooley's co-workers that "Cooley was fired because he turned out to be a faggot."

31. Shortly after his phone call with Staff Sergeant Brannon, Mr. Cooley called Chief Bolton's secretary and asked to speak to Chief Bolton directly. The secretary told Mr. Cooley that Staff Sergeant Brannon was supposed to have "taken care of" the issue and that Chief Bolton would not meet with Mr. Cooley.

32. Mr. Cooley has never received a written explanation for why he was terminated.

33. Following his termination Mr. Cooley spoke with his immediate supervisor, Captain Selman, in an effort to learn why he was terminated. Captain Selman told Mr. Cooley that "they are looking at you as a liability because of the type of work we do with kids."

34. Captain Selman also told Mr. Cooley that "I wish I had one bad thing to say about you that would justify your dismissal, but there isn't anything." Captain Selman told Mr. Cooley

that if he ever needs a reference, he should put down Captain Selman's individual contact information for a positive reference instead of listing the Sheriff's Department.

Mr. Cooley's Appeal of his Termination to Sheriff McGee

35. On June 16, 2010, Mr. Cooley spoke by telephone directly with Sheriff McGee to contest his termination. Sheriff McGee told Mr. Cooley that he would "look into the issue."

36. Sheriff McGee never communicated with Mr. Cooley again. Mr. Cooley left phone messages for Sheriff McGee on June 21, 2010 and June 23, 2010. Mr. Cooley also sent a letter to Sheriff McGee on July 21, 2010 recounting the events leading up to his termination, including Staff Sergeant Brannon's statement to Mr. Cooley that he was being fired because he is gay. A copy of Mr. Cooley's letter to Sheriff McGee dated July 21, 2010 is attached as Exhibit B. Mr. Cooley never received a response to his phone calls or his letter.

37. Mr. Cooley attempted to appeal his termination by contacting the Forrest County Board of Supervisors (the "Board of Supervisors"). A copy of Mr. Cooley's letter to the Board of Supervisors dated July 21, 2010 is attached as Exhibit C.

38. In response to his letter to the Board of Supervisors, Mr. Cooley received a letter from the Board Attorney dated July 30, 2010, stating that pursuant to Mississippi Code Section 19-2-9(2), the Forrest County Sheriff has elected to adopt and maintain a system of personnel administration independent of that of the Forrest County Board of Supervisors. The letter further stated that the Board Attorney had provided a copy of Mr. Cooley's letter to Sheriff McGee and to legal counsel for the Sheriff's Department. A copy of the Board Attorney's letter dated July 30, 2010 is attached as Exhibit D.

**Mr. Cooley's Application for Unemployment Benefits
and the Hearing Before an Administrative Law Judge**

39. When Mr. Cooley applied for unemployment benefits with the Mississippi Department of Employment Security ("MDES"), the Sheriff's Department contested his application by asserting that Mr. Cooley was terminated because he "displayed inappropriate conduct and behavior while off duty, unacceptable for an officer." Based on that assertion from the Sheriff's Department, MDES initially denied Mr. Cooley's application for unemployment benefits. A copy of the initial denial from MDES, dated July 21, 2010, is attached as Exhibit E.

40. Pursuant to MDES's appeal procedures, Mr. Cooley appealed his benefits denial to an administrative law judge ("ALJ") within MDES. The ALJ conducted a hearing on August 25, 2010, at which the Sheriff's Department had a full opportunity to present any testimony or documentary evidence demonstrating that Mr. Cooley had engaged in inappropriate conduct unacceptable for an officer.

41. After conducting the hearing, the ALJ found in favor of Mr. Cooley and concluded that the Sheriff's Department had failed to show that Mr. Cooley was discharged for misconduct. According to the decision of the ALJ: "The claimant was discharged, but not due to misconduct. The employer has not provided substantial evidence that the claimant was involved in misconduct of any sort." A copy of the decision of the ALJ, dated August 26, 2010 is attached as exhibit F.

42. The Sheriff's Department did not appeal the ALJ's decision.

43. On information and belief, Defendants' false assertion that Mr. Cooley was fired for unspecified misconduct has impaired Mr. Cooley's ability to obtain new employment as a corrections officer.

44. At all times relevant to this Complaint, Defendants were acting under color of state law.

CLAIM ONE
VIOLATION OF EQUAL PROTECTION

45. Plaintiff reasserts and incorporates by reference all the preceding paragraphs of this Complaint.

46. Chief Bolton and Staff Sergeant Brannon terminated Mr. Cooley because of his sexual orientation and/or same-sex relationship.

47. Mr. Cooley's sexual orientation and same-sex relationship have no bearing on his ability to perform his job as a correctional officer.

48. Mr. Cooley's termination because of his sexual orientation and/or same-sex relationship was based on animus towards gay people.

49. Mr. Cooley's termination because of his sexual orientation and/or same-sex relationship violated his Fourteenth Amendment right to equal protection.

50. Sheriff McGee acquired full knowledge of Chief Bolton and Staff Sergeant Brannon's unconstitutional termination of Mr. Cooley through, *inter alia*, Mr. Cooley's June 16, 2010 telephone conversation with Sheriff McGee, Mr. Cooley's July 21, 2010 letter to Sheriff McGee, and Mr. Cooley's July 21, 2010 letter to the Board of Supervisors, which was forwarded by the Board Attorney to Sheriff McGee on July 30, 2010. Despite acquiring such knowledge, Sheriff McGee ratified and acquiesced in Mr. Cooley's unconstitutional termination.

51. Under Mississippi State law, Sheriff McGee has final policymaking authority with respect to employment decisions made by the Sheriff's Department.

52. Pursuant to 42 U.S.C. § 1983, Defendants are liable for, under color of state law, depriving Mr. Cooley of his Fourteenth Amendment right to equal protection.

CLAIM TWO
VIOLATION OF SUBSTANTIVE DUE PROCESS

53. Plaintiff reasserts and incorporates by reference all the preceding paragraphs of this Complaint.

54. Chief Bolton and Staff Sergeant Brannon terminated Mr. Cooley because of his intimate association with a same-sex partner and private consensual sexual activity.

55. Mr. Cooley's intimate association with a same-sex partner and private consensual sexual activity have no bearing on his ability to perform his job as a correctional officer.

56. Defendants' termination of Mr. Cooley unconstitutionally infringed upon his fundamental rights and protected liberty interests in intimate association and private consensual sexual activity, which are protected by the Fourteenth Amendment's guarantee of substantive due process.

57. Sheriff McGee acquired full knowledge of Chief Bolton and Staff Sergeant Brannon's unconstitutional termination of Mr. Cooley through, *inter alia*, Mr. Cooley's June 16, 2010 telephone conversation with Sheriff McGee, Mr. Cooley's July 21, 2010 letter to Sheriff McGee, and Mr. Cooley's July 21, 2010 letter to the Board of Supervisors, which was forwarded by the Board Attorney to Sheriff McGee on July 30, 2010. Despite acquiring such knowledge, Sheriff McGee ratified and acquiesced in Mr. Cooley's unconstitutional termination.

58. Under Mississippi State law, Sheriff McGee has final policymaking authority with respect to employment decisions made by the Sheriff's Department.

59. Pursuant to 42 U.S.C. § 1983, Defendants are liable for, under color of state law, unconstitutionally infringing upon Mr. Cooley's fundamental rights and protected liberty interests in intimate association and private sexual conduct, which are protected by the Fourteenth Amendment's guarantee of substantive due process.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for the following relief:

- (1) Damages in an amount to be proven at trial, including punitive damages against Defendants McGee, Bolton, and Brannon in their individual capacities.
- (2) An injunction ordering that Mr. Cooley be reinstated as a correctional officer and that the Sheriff's Department implement adequate policies and training to ensure that Mr. Cooley is not subjected to continued unconstitutional discrimination.
- (3) Reasonable costs, expenses, and attorneys' fees pursuant to 42 U.S.C. § 1988.
- (4) Any further relief that the Court deems just and proper.

Dated: October 18, 2010

Respectfully submitted,

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** Pro Hac Vice Motion to Follow*

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