

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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AMADO BRITO,

*Plaintiff,*

-against-

GLENN S. GOORD, Commissioner; CLAIR BEE, JR.,  
Assistant Commissioner; SUPERINTENDENT  
HOLLINS, Oneida Correctional Facility; BURGE,  
Superintendent, Auburn Correctional Facility;  
RABIDEAU, First Deputy Superintendent of Auburn  
Correctional Facility; JOHN DOE, Correctional Officer at  
Oneida Correctional Facility; JOHN DOE, Correctional  
Officer at Oneida Correctional Facility; JOHN DOE,  
Correctional Officer at Oneida Correctional Facility; H.  
MOSS, Correctional Officer at Oneida Correctional  
Facility; AMINA AHSAN, Facility Health Services  
Director at Auburn Correctional Facility; ANN  
DRISCOLL, Acting Nurse Administrator at Auburn  
Correctional Facility,

**TRIAL BRIEF**

9:02-CV-1410

(FJS)(RFT)

*Defendants.*

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**THE COMPLAINT**

The allegations contained in the Complaint raise three distinguishable claims. The first, stated against defendants identified as John Does 1-3, alleges that the plaintiff was assaulted by unnamed corrections officers. The second, while it is separable in essential elements between the named defendants, is that the plaintiff was deprived of medical care sufficient to pass constitutional muster. The third claims that plaintiff's right to be free of cruel and unusual punishment was violated when, he claims, he was deprived of two meals and slapped three times by defendant Moss.

The first claim is not at issue in this trial, however, as plaintiff neither identified by name

nor obtained jurisdiction over those who plaintiff claims were involved. The allegations asserting this claim are set forth in paragraphs 1-6 of the Statement of Facts portion of the Complaint. Accordingly, defendants respectfully submit that the trial of this matter should be limited to the question of whether plaintiff's Eighth Amendment rights were violated by the alleged failure to provide him with appropriate medical care and by the conduct alleged against defendant Moss.

As set forth in the Complaint, the period at issue for trial extends from March 8, 2002 to September 10, 2002. During this time, plaintiff claims he sought medical care for injuries he claims to have sustained at the hands of those identified as John Doe.

Evidence will show that although plaintiff claimed to have been assaulted by unknown corrections officers on March 7, 2002, a physical examination of him conducted on March 8, 2002, showed no indication of injuries. This assessment will be substantiated by photographs taken on two separate dates during the period in question.

Evidence will also show that in spite of many letters from plaintiff to prison officials, and grievances filed by plaintiff, he was not deprived of medical care. Facility ambulatory health records will show the plaintiff was seen by health department staff on at least 35 occasions over the period in issue and that plaintiff's charges that he was not provided with adequate medical care is simply because he did not agree with the assessments of the medical staff.

In substance, plaintiff claims that during the period in question, he was, for a while, under the care of defendant Driscoll. Plaintiff claims that defendant Driscoll refused to treat plaintiff and falsified his medical records to hide his need for treatment. Records for the period will show that plaintiff was under the medical supervision of Nurse Robinson, with whom plaintiff does not

voice a complaint, and that defendant Driscoll's only involvement was in investigating some of plaintiff's multiple complaints of inadequate care. Thus, plaintiff's claim against defendant Driscoll rests solely on whether she falsified any of plaintiff's medical records. To the extent that his complaint against her could be founded in a criticism of the sufficiency of her investigation into his grievances and letters of complaint, her conduct is protected by qualified immunity, if valid to any extent.

His claims against defendants Goord, Bee, Hollins, Burge, Rabideau and Ahsan are limited to allegations that they allowed a deprivation of medical care to continue, as distinguished from directly depriving him of care needed. Evidence will show that the plaintiff was not under direct medical treatment by these defendants. Thus, there is not the requisite direct involvement to support a claim that these defendants actually participated in the claimed deprivation. As a result, these defendants are not liable to plaintiff because a claim of *respondeat superior* is not recognized in a 1983 action.

Plaintiff's claim against defendant Moss derives from an incident that occurred on May 9, 2002, in which plaintiff was charged with and found guilty of prison infractions that included a refusal to comply with direct orders, threatening staff, creating a disturbance and an unhygienic act.

Dated: Syracuse, New York  
April 5, 2002

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*s/ Patrick F. MacRae*

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