

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

JESSICA FOWLER,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. _____
)	Jury Demand
CALEB SHANE HOPKINS and)	
MOORE COUNTY, TN)	
)	
Defendants.)	

COMPLAINT

Comes now the Plaintiff, by and through her attorneys of record, and for cause of action against the Defendants, both jointly and severally, would respectfully state as follows:

I. INTRODUCTION

- 1. This action is brought against the Defendants pursuant to 42 U.S.C. § 1983 for deprivation of civil rights secured by the Eighth and Fourteenth Amendments to the United States Constitution.
- 2. This action is brought additionally against Defendant Moore County, TN pursuant to Tenn. Code Ann. § 8-8-302 and Tenn. Code. Ann. § 29-20-205, and against Defendant Caleb Shane Hopkins pursuant to Tennessee common law.

II. JURISDICTION AND VENUE

- 3. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.
- 4. This is an action for redress for violations of the civil rights laws of the United States and jurisdiction of this Court is therefore invoked pursuant to 28 U.S.C. § 1343(a), 42

U.S.C. § 1983, and 20 U.S.C. § 1681(a).

5. This Court has supplemental jurisdiction for Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a) because such claims are "so related to claims" within this Court's original jurisdiction "that they form part of the same case or controversy."

6. The acts and omissions and the resulting claims asserted in this Complaint occurred in and arose in Moore County in the State of Tennessee and in this District. Venue is thus properly laid in this Court pursuant to 28 U.S.C. § 1391(b).

III. PARTIES

7. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

8. Plaintiff Jessica Fowler is currently incarcerated in the Tennessee Women's Prison in Davidson County, TN. At all times relevant to this complaint, she was incarcerated in the Moore County Jail.

9. Defendant Moore County, TN is a political subdivision of the State of Tennessee. The Moore County Sheriff's Department is a division of Moore County which administers the Moore County Jail. The Moore County Sheriff's Department has the responsibility to ensure the reasonable treatment of inmates, as well as to properly train and supervise its employees.

10. Defendant Caleb Shane Hopkins was, at all times relevant hereto, an employee of the Moore County Sheriff's Department who worked in the Moore County Jail with law enforcement authority to supervise inmates. At all times relevant hereto, Defendant Hopkins was acting under the color of law in the course and scope of his employment with the Moore County Sheriff's Department. He is sued in his individual and official capacities.

IV. STATEMENT OF FACTS

11. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

12. Plaintiff entered the Moore County Jail on or about September 21, 2016 after being arrested for a probation violation.

13. Shortly thereafter, a court found Plaintiff to be in violation of her probation and put her sentence into effect such that she began serving her sentence in the Moore County Jail at that time.

14. Due to her good behavior and work, Plaintiff achieved “trustee” status at the Jail, entitling her to additional freedom of movement in the facility, a job washing clothes, and significant jail credits which reduced her sentence.

15. In early January 2017, Defendant Hopkins became employed by Defendant Moore County as a corrections officer at the Moore County Jail. Upon information and belief, He had not yet completed all training required of Sheriff’s Deputies.

16. One night in early February 2017, Plaintiff was the only person working on the night laundry shift and was in the library across the hall from the laundry room waiting for the machines to finish. Upon information and belief, only two corrections officers were working. There are no cameras in the library, although one or more cameras were in the hallway and would have shown anyone coming in or out of the library.

17. While Plaintiff was in the library, Defendant Hopkins entered despite having no reason to be and remain there.

18. After Defendant Hopkins entered the library, approached Plaintiff from behind, put his hand down her shirt, began fondling her breasts, and then asked Plaintiff to “suck my ding dong.”

19. Plaintiff is a lesbian and not sexually attracted to men, including Defendant Hopkins.

20. Plaintiff did not desire or consent to any sexual contact with Defendant Hopkins.

21. As an inmate, Plaintiff did not feel that she had the ability to refuse Defendant Hopkins's advances and to tell him "no" because he was a corrections officer with power and authority over her.

22. Due to the coercive atmosphere and power imbalance, Plaintiff reluctantly engaged in oral sex with Defendant Hopkins.

23. Defendant Hopkins's conduct constitutes the criminal offense of Rape under Tennessee law because the sexual penetration was accomplished using coercion and without effective consent. Tenn. Code Ann. § 39-13-503.

24. In an attempt to keep Plaintiff from reporting the rape, Defendant Hopkins warned Plaintiff not to tell anyone what happened and told her no one would believe her. He also gave her cigarettes and prescription drugs to further coerce her silence, which she otherwise could not have possessed in the jail.

25. Defendant Hopkins continued to coerce Plaintiff into non-consensual oral sex several more times under the same pattern of behavior: cornering her alone in the library at night and demanding oral sex.

26. After several rapes, Plaintiff told Defendant Hopkins that she did not want to engage in oral sex because it was physically uncomfortable for her.

27. Defendant Hopkins then demanded vaginal sex from Plaintiff and ordered her to "bend over."

28. Plaintiff requested that Defendant Hopkins use a condom because she was not on

birth control. Defendant Hopkins refused, stating that he was married and “married men don’t buy condoms.”

29. Plaintiff did not consent to sexual penetration, was not attracted to Defendant Hopkins, and had no desire to engage in sex with him. However, Plaintiff felt coerced by Defendant Hopkins’s authority over her into complying to avoid retribution and retaliation.

30. Defendant Hopkins continued to force Plaintiff to have non-consensual unprotected vaginal sex approximately four times in the same manner over a period of a few weeks: cornering her alone in the library at night and demanding the sexual act.

31. The repeated rapes of Plaintiff by Defendant Hopkins resulted in Plaintiff becoming pregnant in April or May 2017.

32. Plaintiff became ill upon experiencing the effects of pregnancy, and was also emotionally depressed as a result of the repeated sexual assaults.

33. On or about May 13, 2017, a sergeant employed by the Moore County Sheriff’s Department told her that he had noticed changes to Plaintiff’s emotional state and asked her what was going on. Plaintiff then told him the nature and extent of the sexual abuse by Defendant Hopkins.

34. Once the rapes were reported, Plaintiff was transferred to a Tennessee state prison.

35. Upon being relocated from jail to prison, Plaintiff was no longer eligible for the substantial jail credits she had been receiving, which significantly prolonged her sentence.

36. Had Plaintiff not been transferred to prison but rather remained in the county jail and continued to receive the same jail credits, her sentence would have expired on or about July 2017. Instead, she has remained in custody and was compelled to remain pregnant in prison and

deliver the baby—several weeks premature—in December 2017. Plaintiff is currently unable to have physical custody of her newborn baby while she remains in prison for several more months.

37. Plaintiff experienced significant physical and emotional trauma and suffers from Post-Traumatic Stress Disorder as a result of being raped and impregnated by Defendant Hopkins, as well as having to be pregnant and deliver a baby while incarcerated. Specifically, Plaintiff has experienced anxiety, depression, loss of appetite, loss of sleep, nightmares, and extreme physical pain both during and after the rapes. Plaintiff has received regular therapy and mental health medication and treatment as a result of the abuse.

38. On November 17, 2017, Defendant Hopkins pled guilty in Tennessee state court to six counts of Sexual Contact with an Inmate by a Law Enforcement Officer (Tenn. Code Ann. § 39-16-408) and two counts of Official Misconduct (Tenn. Code Ann. § 39-16-402), all felonies. He will be required to be placed on the Tennessee Sex Offender Registry. A sentencing hearing is currently scheduled for February 23, 2018 to determine the length and manner of sentence.

V. CLAIMS FOR RELIEF

COUNT 1: FEDERAL CIVIL RIGHTS VIOLATION BY DEFENDANT HOPKINS

39. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

40. The actions of Defendant Hopkins which resulted in the Plaintiff's injuries were done under color of state law and in a manner which caused the Plaintiff to suffer constitutional violations.

41. The actions of Defendant Hopkins violated the right of the Plaintiff not to be subjected to sexual abuse and cruel and unusual punishment as guaranteed by the Eighth and Fourteenth Amendments. A reasonable person would have known that this constitutional right

was clearly established at the time the alleged wrongful conduct occurred, and that such conduct violated that right.

42. The actions of Defendant Hopkins violated the right of the Plaintiff not to be impregnated against her will as guaranteed by the Eighth and Fourteenth Amendments. A reasonable person would have known that this constitutional right was clearly established at the time the alleged wrongful conduct occurred, and that such conduct violated that right.

43. The conduct of Defendant Hopkins in this matter was intentional, reckless, malicious, deliberate, unjustified, excessive, and was indicative of his disregard of and indifference to the Plaintiff's rights and wellbeing which led to the unnecessary infliction of pain and suffering, and the deprivation of her constitutional rights to be free from sexual abuse.

44. As a direct and proximate result of the unlawful conduct of Defendant Hopkins, the Plaintiff suffered injury from the deprivation of her civil rights as protected by the Eighth and Fourteenth Amendments and the Civil Rights Act of 1871, 42 U.S.C. § 1983 and is entitled to relief.

**COUNT 2: FEDERAL CIVIL RIGHTS VIOLATION BY DEFENDANT MOORE
COUNTY, TN**

45. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

46. Defendant Moore County has adopted policies, procedures, practices or customs within its law enforcement agencies that provide for the supervision and treatment of inmates.

47. Defendant Moore County is responsible for supervising its employees in the county jail to ensure inmates are properly treated.

48. The sexual abuse against Plaintiff went on for several months in a relatively small and controlled environment where it was feasible to be aware of where inmates and corrections

officers are located.

49. Reasonable prison officials should be aware of the obvious and substantial risk that leaving a male corrections officer, who is new to the Department and has not yet completed all training, alone with a female inmate on multiple occasions over an extended period of time in an area that does not have surveillance cameras and in which the corrections officer does not need to be could result in the male officer sexually assaulting the female inmate.

50. Other agents of the Moore County Sheriff's Department knew or should have known that Defendant Hopkins was alone with Plaintiff in the library over extended periods of time without legitimate reason during a period of several months because cameras record who comes in and out of the library, and knew or should have known that this posed a serious risk to Plaintiff.

51. Plaintiff on several occasions saw the "control room" where camera footage was displayed on TV monitors, and observed corrections officers failing to watch the camera footage, but instead play games on their cell phones, check Facebook, and otherwise fail to supervise the footage.

52. On most of the occasions when the rapes took place, only a single other corrections officer besides Defendant Hopkins was on duty. On at least one occasion when he raped Plaintiff, Defendant Hopkins was the only corrections officer on duty at the jail. This amount of supervision of both inmates and corrections officers is constitutionally inadequate, particularly here where a newly-hired male officer is guarding female inmates alone.

53. Defendant Hopkins regularly violated jail policies in a manner that other agents of Moore County knew or should have known, including allowing inmates into the property room and medication room, and providing inmates with contraband. This did or should have put agents

of Moore County on notice that Defendant Hopkins may be violating procedure in other ways as well such that additional supervision was necessary.

54. Agents of the Moore County Sheriff's Department knew or should have known, based on cigarette odor, that Plaintiff was smoking cigarettes in the jail she could not have had without someone providing them to her, which raised or should have raised serious questions as to how and why someone was providing this to her.

55. During the months of abuse, Plaintiff exhibited outward signs of distress and/or depression from which employees of the Moore County Sheriff's Department knew or should have known could have resulted from violations of her civil rights in the manner described herein.

56. The Moore County Jail only incarcerated a handful of female inmates during the time in question, but nonetheless failed to provide constitutionally-adequate safeguards necessary to protect female inmates from sexual assault from male guards. In particular, the jail was understaffed and under-supervised late at night which allowed Defendant Hopkins to repeatedly rape Plaintiff without detection over a period of months.

57. Defendant Moore County, through its agents in the Sheriff's Department who were acting in their official capacities and under color of state law, were deliberately indifferent to Plaintiff's constitutional right to be free from assault and sexual abuse because they were aware of a substantial risk of serious harm to Plaintiff for the reasons described herein and then disregarded that risk in failing to take reasonable measures to abate it.

58. There was a closely related causal connection between Defendant Moore County's agents' actions and inactions and the constitutional violations afflicted on the Plaintiff.

59. As a result of the deliberate indifference to the rights of the Plaintiff by Defendant Moore County and its agents, the Plaintiff suffered serious personal injury and violations of her clearly established rights under the Eighth and Fourteenth Amendments, of which a reasonable person would have been aware, and is entitled to relief under 42 U.S.C. § 1983.

COUNT 3: LIABILITY OF DEFENDANT MOORE COUNTY PURSUANT TO TENN. CODE ANN. § 8-8-302

60. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

61. Plaintiff suffered a wrong, loss, and/or damage, namely repeated non-consensual coerced sexual assaults by Defendant Hopkins, as well as an undesired pregnancy.

62. Defendant Hopkins at all times relevant herein was employed by the Moore County Sheriff and/or Moore County, and was acting by virtue of and/or under color of his office as a deputy appointed by the Moore County Sheriff. He was not merely acting as a “special deputy” employed by some other employer.

63. Defendant Moore County is liable for the wrongs, losses, and/or damage caused by Defendant Hopkins as described above in an amount not to exceed the surety bond executed by the Moore County Sheriff pursuant to Tenn. Code Ann. § 8-8-103, or else the amount of bond that lawfully should have been executed.

COUNT 4: LIABILITY OF DEFENDANT MOORE COUNTY PURSUANT TO TENNESSEE GOVERNMENTAL TORT LIABILITY ACT

64. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

65. Assuming, *arguendo*, that Defendant Moore County is not liable for violating Plaintiff’s civil rights, Defendant Moore County is liable for negligent supervision of Defendant Hopkins pursuant to the Tennessee Governmental Tort Liability Act. Tenn. Code. Ann. § 29-20-201, et al.

66. Defendant Moore County, through its agents, owed a duty to Plaintiff to ensure its agents, including Defendant Hopkins, did not sexually assault her.

67. Defendant Moore County, through its agents, breached that duty by not keeping adequate watch over Defendant Hopkins over a period of several weeks—despite the availability of cameras—to discover he was routinely alone with Plaintiff in the library despite there being no reason for the two to be alone for extended periods of time and for it to be improper for the two of them to be alone in a room that did not have cameras.

68. It was reasonably foreseeable that allowing Defendant Hopkins to regularly be alone with a female inmate without supervision in a room without cameras could result in sexual assault, particularly because Defendant Hopkins was new to the department.

69. The negligent supervision of Defendant Hopkins, through agents of Defendant Moore County, proximately caused the sexual assault of Plaintiff resulting in damages.

70. Upon information and belief, Defendant Moore County has policies, practices, and procedures to supervise movements of inmates and corrections officers, such that supervision was not a discretionary function that involved planning, but rather an operational-level act of supervisory officers.

71. Defendant Moore County, through its agents, negligently failed to perform the operational task of supervising Defendant Hopkins to ensure he was not improperly alone with female inmates and sexually assaulting them.

72. Defendant Moore County is liable to Plaintiff for negligent supervision pursuant to Tenn. Code Ann. § 29-20-205.

**COUNT 5: LIABILITY OF DEFENDANT HOPKINS FOR INTENTIONAL TORTS
PURSUANT TO TENNESSEE COMMON LAW**

73. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

74. Defendant Hopkins owed Plaintiff a legal duty not to coerce her to engaging in non-consensual sexual acts, breached that duty by doing so, and caused physical and emotional harm to Plaintiff which resulted in significant damages.

75. For the repeatedly raping Plaintiff, and for inducing an undesired pregnancy, Defendant Hopkins is liable for the Tennessee common law torts of assault, battery, wrongful pregnancy, and intentional infliction of emotional distress.

**COUNT 6: LIABILITY OF DEFENDANT HOPKINS FOR NEGLIGENT TORTS
PURSUANT TO TENNESSEE COMMON LAW**

76. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

77. For repeatedly forcing Plaintiff to engage in non-consensual sexual acts resulting in harm, and for inducing an undesired pregnancy by not using birth control despite Plaintiff's requests, Defendant Hopkins is liable for the Tennessee common law torts of negligent infliction of emotional distress, and negligently causing wrongful pregnancy.

VII. PRAYERS FOR RELIEF

78. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

79. That process be issued to the Defendants and that they be required to answer in the time required by law.

80. That process issued to the Defendants and that they be required to answer in the time required by law.

81. That judgment be rendered in favor of the Plaintiff and against the Defendants.

82. That Plaintiff be awarded those damages to which it may appear that she is entitled by proof submitted in this case for his physical and mental pain and suffering both past and future, loss of enjoyment of life, and the violation of his rights guaranteed to him by the Eighth and Fourteenth Amendments to the Constitution of the United States.

83. That Plaintiff be awarded damages in the amount of \$1,000,000 against Defendant Hopkins for the state common law causes of action alleged.

84. That Plaintiff be awarded damages in the amount of \$300,000 against Defendant Moore County for negligent supervision pursuant to the Governmental Tort Liability Act, should that cause of action apply.

85. That punitive damages be asserted against Defendant Hopkins.

86. That as to all Defendants the Plaintiff be awarded reasonable expenses including reasonable attorneys fees and expert fees and discretionary costs pursuant to 42 U.S.C. § 1988 (b) and (c).

87. That the Plaintiff receive any other further and general relief to which it may appear that she is entitled

88. That a jury of six (6) is demanded.

Respectfully submitted,

/s/ David J. Weissman

David J. Weissman (BPR #25188)

Benjamin K. Raybin (BPR #29350)

RAYBIN & WEISSMAN, P.C.

424 Church Street, Suite 2120

Nashville, Tennessee 37219

(615) 256-6666

(615) 254-4254 (fax)

DWeissman@NashvilleTNLaw.com

BRaybin@NashvilleTNLaw.com

Attorneys for Plaintiff