

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

The Estate of Marquette F. Cummings, Jr.,)
)
Plaintiff,)
)
VS.)
)
Warden Carter Davenport, individually,)
and in his official capacity as Warden)
of St. Clair Correctional Facility, et al.,)
)
Defendants.)

CIVIL ACTION NO: 2:15-CV-2274
PLAINTIFF DEMANDS JURY TRIAL

FIRST AMENDED COMPLAINT

NOW INTO COURT, **Plaintiff, THE ESTATE OF MARQUETTE F. CUMMINGS, JR., and Angela Gaines**, through the undersigned counsel, assert the following:

I. JURISDICTION

The jurisdiction of this Court is invoked pursuant to the Acts of Congress known as 28 U.S.C.A §1331, as this case involves the violation of the laws of the United States, specifically the Eighth Amendment of the United States Constitution and 42 U.S.C.A. §1983. Furthermore, this Court also has supplemental jurisdiction to hear state law claims under Alabama law pursuant to 28 U.S.C.A. §1367, as all of the state law claims mentioned throughout this complaint arise out of the same transaction or occurrence as the violations of federal law.

II. PARTIES

1. **Plaintiffs, The Estate of Marquette F. Cummings, Jr., by and through its Executor, Victor Revill, and Angela Gaines**, both of whom are citizens of the United States and the State of Alabama.

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2. Made defendants herein are:

(a) **Defendant Warden Carter Davenport**, in his individual capacity and in his official capacity as Warden for St. Clair Correctional Facility, a facility which is a part of the Alabama Department of Corrections system. He is a person subject to suit under 42 U.S.C.A. §1983.

III. FACTUAL OVERVIEW AND PROCEDURAL HISTORY

3. The deceased, Marquette F. Cummings, Jr., (“Cummings”) was an inmate at St. Clair Correctional Facility (“St. Clair”) in Springville, Alabama.

4. During the weekend of January 3-5, 2014, Cummings witnessed a physical altercation involving inmate Timothy Gayle. Following that altercation, Cummings and Gayle were involved in an incident that required that both inmates be separated by St. Clair Correctional Officers.

5. Pursuant to ADOC Administrative Regulation 302 and Administrative Regulation 300 (henceforth “AR-302” and “AR-300” respectively), officers filled out a reports about both the altercation between Gayle and the Decedent as well as the altercation between Gayle and the other inmate. Immediately following these incidents, those reports were produced to Warden Davenport pursuant to AR-302 and subsequently to Investigation and Intelligence Division pursuant to AR-300.

6. After these incidents and following the administratively required reporting, Gayle and Cummings were never put into protective custody, put in separate dorms, nor was a plan implemented, or even formed, to physically separate each inmate away from the other, as required when put on notice through the reporting of violent incidents.

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7. On Monday, January 6, 2014, at approximately 7:40 a.m., Gayle stabbed Cummings in his eye with a weapon made by Gayle known as a “shank” and Cummings began to bleed profusely. Several inmates helped Cummings to the infirmary at St. Clair Correctional Facility where he was then quickly air lifted to UAB Hospital (“UAB”) in Birmingham.

8. Cummings was initially admitted to the Emergency Room and was later transferred to the Intensive Care Unit (ICU).

9. While Cummings was being transported to UAB at approximately 8:00 a.m. on January 6, 2014, Plaintiff, Angela Gaines was informed that Cummings, her son, had been stabbed.

10. Ms. Gaines immediately called St. Clair multiple times to verify this information with prison officials, but was unable to speak with a live person until several hours later into the afternoon. When Defendant Davenport finally returned Ms. Gaines’ phone call, he informed Ms. Gaines that her son, Cummings had been involved in “an incident,” that he had been stabbed, and that he was being transported to a hospital for medical treatment at the present time; however, Cummings was air lifted that morning to UAB.

11. Ms. Gaines asked Warden Davenport at which hospital her son would be taken to and Warden Davenport responded that he could not disclose this information, but stated he would call her back with more information.

12. After several more hours of waiting for Defendant Davenport to notify Plaintiff Gaines of the whereabouts of her son, Warden Davenport finally informed Ms. Gaines that Cummings was being treated at UAB.

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13. When Ms. Gaines arrived, her pleas to see her injured son were repeatedly denied. She was asked to wait at least ninety (90) minutes before she was able to see him. Despite the several hour delay in notifying Ms. Gaines of her son's situation, and in addition to several more hours of delay to inform Ms. Gaines of her son's location, she was told she would have to wait ninety (90) more minutes to be able to see her son.

14. The hospital staff finally informed Ms. Gaines about the incident where Cummings had been stabbed in the eye and that, due to his injuries, he was only operating with 10% of normal brain functioning.

15. Despite this statement by Defendant UAB's personnel, Cummings would continually respond to verbal cues from Ms. Gaines, such as when she asked him to "blink if you can hear me," Cummings complied to his mother's request every time.

16. The Defendant UAB's medical personnel declared Cummings a non-survivor shortly after his arrival with the medical records stating that "no heroic measures" would be taken to try to save his life.

17. In fact, Defendant Melton changed Cumming's code status at or around 9:17 p.m. on January 6, 2014, without any authorization from the family or notifying the family of such decision.

18. Instead of following standard operating procedure, Defendant Melton relied upon the statements of Defendant Davenport, a non-family member and not a legal guardian, to place Cummings on a code to not allow for resuscitation under any circumstances, commonly known as Do Not Resuscitate or "DNR".

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19. Defendant Melton changed Cummings code status at or about 24 hours before a brain death study was even ordered.

20. Ms. Gaines and several family members were present at the hospital throughout the time of Cummings's treatment.

21. UAB medical personnel informed Ms. Gaines that Warden Davenport authorized UAB medical personnel to stop giving Cummings medication and to disconnect the life support machine.

22. Pursuant to Warden Davenport's directive, UAB medical personnel made the decision to "Do Not Resuscitate" Cummings under any circumstances.

23. Cummings's mother, Ms. Gaines made her wishes known that her son was to remain on life support. Ms. Gaines repeatedly begged that that her son remain on life support because he was still breathing and responding to verbal commands.

24. The UAB medical personnel repeatedly conveyed that "it was not her (Ms. Gaines') call" because the State had legal custody over Cummings and that the decision to let her son die was the Warden's decision. Based on this directive from Warden Davenport, Cummings was taken off of life support and he passed away just hours after removal.

25. Cummings stopped breathing at 7:05 p.m. on January 7, 2014.

26. Defendant Davenport's directive caused UAB medical personnel to not provide sufficient and adequate care to Cummings. Defendant Davenport had both objective and subjective knowledge that in emergencies, medical personnel need to have the flexibility to do all that is

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possible to save a human's life, and without such flexibility, a significant risk of danger was created for Cummings. Thus, Warden Davenport disregarded this risk to Cummings by ordering UAB medical personnel to not do anything "heroic" nor to resuscitate Cummings. Such disregard amounts to deliberate indifference to the safety, health, and well-being of Cummings in violation of the Eighth Amendment.

27. Defendant Melton and Unnamed Defendants "A"- "M" actions, or lack there-of, contributed to the denial of access to appropriate medical care and failed to follow proper protocol when addressing or reviewing "DNR" orders.

IV. CAUSES OF ACTION

CLAIMS AGAINST ADOC AND ITS EMPLOYEES

42 U.S.C.A. §1983-EIGHTH AMENDMENT VIOLATION

28. Plaintiffs re-allege the aforementioned factual allegations and incorporate them by reference in this claim

29. A prison official's deliberate indifference to a substantial risk of serious harm to an inmate violates the Eighth Amendment. A prison official's duty is to protect prisoners from violence at the hands of other prisoners. While every injury suffered by one inmate at the hands of another is not a constitutional violation, an Eighth Amendment violation occurs when a substantial risk of serious harm, when the official is subjectively aware, exists and when the official does not respond reasonably to the risk. As stated above, the fatal stab wounds Cummings sustained were the result of an altercation at St. Clair Correctional Facility. Cummings was made the target for violence because of the initial altercation between him and the offending inmate, Gayle. After this initial

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altercation, Cummings and Gayle were not supposed to be in the same area. They were supposed to be separated. The prison staff, including Warden Davenport and the unnamed corrections officers assigned to the area, had both objective and subjective knowledge that the offending inmate posed a significant risk of danger to Cummings due to the required reporting that corrections officers must make pursuant to AR-302. They disregarded this risk to Cummings by allowing the violent inmate and Cummings to be in the same vicinity. Such disregard amounted to a deliberate indifference to the safety, health, and well-being of Cummings in violation of the Eighth Amendment. Because of this indifference, Cummings was violently attacked causing Cummings's death. Consequently, **Warden Carter Davenport is liable under 42 U.S.C.A. §1983 for this Eighth Amendment claim.**

30. ADOC employees' failure to adhere to policy also constitutes an Eighth Amendment violation under the same theory. As stated above, Cummings was targeted for violence because of the initial altercation between him and the offending inmate. Every violent incident triggers Administrative Regulation 300 ("AR-300") (Investigation and Intelligence Division) and Administrative Regulation 302 ("AR-302") (Incident Reporting). The policies were followed by the officers, and the reports were made and disclosed to the Warden pursuant to the policy. After this initial altercation, Cummings and the inmate were not supposed to be in the same area and were supposed to be separated. ADOC Administrative Regulation 435 ("AR-435") (Protective Custody) states: "It is the policy of ADOC to provide a form of separation from the general population for inmates requesting *or requiring* protection from other inmates for reasons of safety and well-being. AR-435 further provides that the "Enemy Validation Committee" is a committee composed of the Classification Supervisor/Specialist (name unknown), the Warden or his designee, and another member from the security staff. This committee is vested with the

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responsibility of verifying enemy situations. AR-435 further provides that “the Warden (Davenport) is responsible for developing and implementing standard operating procedures for enforcing AR-435 in a prison facility. Lastly, AR-435 also provides that “the Warden or his designee may place an inmate in protective custody based upon creditable information received concerning the safety and welfare of an inmate or for reasons of institutional security.

31. ADOC also promulgates Administrative Regulation 436 (“AR-436”) (Institutional Segregation Review) which provides that the “Institutional Segregation Review Board is a committee comprised of the Warden (Davenport), Classification Supervisor, and Chaplain, or alternates for the purpose of reviewing the status of inmates assigned to segregation. This Board is vested with the responsibility of ensuring that inmates requiring segregation from the general population or specific inmates are to remain segregated until the threat of danger or violence is eliminated.

32. In the news release attached hereto as Exhibit “A”, a spokesperson for ADOC stated that Cummings was involved in an incident over the weekend with the offending inmate and that the subsequent stabbing and death was a continuation of this incident. The spokesperson also stated that the suspected offending inmate was a “convicted killer.” Plaintiffs aver that these statements are admissions made by someone with authority to speak for the organization (ADOC) and, specifically, St. Clair Correctional Facility and its personnel. These statements are admissions that the staff at St. Clair Correctional Facility had subjective knowledge based upon creditable information that Cummings was the target of a convicted killer and that nothing was done to protect his safety and well-being from the violent hands of this killer. Cummings was not placed in protective custody and, although St. Clair Correctional Facility’s employees had subjective

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knowledge that Cummings was the target of violence, neither the offending inmate, Gayle, or Cummings was segregated from the general population, nor was Cummings placed in protective custody, and the Board failed to assess this situation properly to ensure that Cummings and the offending inmate, Gayle remain separated. **Consequently, Warden Davenport is liable for this claim.**

33. Not only are the above mentioned Defendants liable for the injuries that occurred prior to Cummings being taken to the hospital, there were constitutional violations even after his transportation to UAB Hospital. Deliberate indifference can be manifested by prison personnel intentionally denying or delaying access to medical care, by prison personnel interfering with prescribed treatment, or by prison doctors responding indifferently to a prisoner's medical needs. The prison staff, including Warden Davenport and the unnamed corrections officers assigned as detail at UAB Hospital, had both objective and subjective knowledge that Cummings' condition was severe and at significant risk of danger if he was not provided proper treatment and, thus, disregarded this risk to Cummings by interfering with the ability of UAB medical personnel to provide proper treatment. Such a disregard amounted to a deliberate indifference to the safety, health, and well-being of Cummings in violation of the Eighth Amendment. Consequently, **Warden Carter Davenport is liable under 42 U.S.C.A. §1983 for this Eighth Amendment claim.**

B. 42. U.S.C.A. §1983-FAILURE TO TRAIN AND NEGLIGENT SUPERVISION

34. Plaintiffs re-allege the aforementioned factual allegations and incorporate them by reference in this claim.

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35. A Plaintiff states a claim under §1983 for the failure to train officers and the negligent supervision of those officers if he/she alleges evidence of a widespread history of prior similar acts OR that the constitutional deprivation is the result of a policy or custom adopted by the entity as a whole. As stated above, ADOC has administrative regulations designed to prevent violence and death for inmates like Cummings.

36. However, Plaintiffs aver as an alternative theory that these regulations are only designed to be executed during business hours Monday through Friday and that ADOC and St. Clair Correctional Facility have adopted a *de facto* policy of not responding to such incidents which occur over the weekend. Thus, incidents that occur over the weekend are not responded to despite AR-300 clearly stating the off-business hours' procedure. ADOC and St. Clair Correctional Facility, through Warden Davenport, have failed to train its employees on how to respond to altercations which occur over the weekends and to properly place inmates in protective custody or disciplinary segregation for altercations that occur over the weekend. ADOC and St. Clair Correctional Facility, through Warden Davenport, have also failed to supervise both the staff AND the inmates as it pertains to incidents that occur over the weekend. Because of this failure, Cummings was not placed in protective custody nor was Gayle, the offending inmate, placed in disciplinary segregation despite the prison staff having actual and subjective knowledge that this inmate posed a significant threat to the safety, health, and well-being of Cummings. Weekend stabbings and altercations have been allowed to escalate in the early parts of the following weeks (Mondays and Tuesdays) and because of this policy of not responding to such incidents effectively, this failure resulted in the death of Cummings. Either those policies were followed resulting in the Warden being put on notice, or the policies were not followed resulting in the systematic failure

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of oversight tantamount to the deliberate indifference to the rights of Mr. Cummings.

Consequently, Warden Davenport is liable for this claim.

C. STATE LAW WRONGFUL DEATH

37. Plaintiffs re-allege the aforementioned factual allegations and incorporate them by reference in this claim.

38. Under Alabama's Wrongful Death Statute, persons whose acts or omissions proximately cause the death of an individual may be liable for the decedent's death. As stated above, ADOC and St. Clair's Correctional Facility staff failed to properly separate Cummings from the Gayle, the offending inmate, and failed to place Gayle, the offending inmate in disciplinary segregation, recklessly disregarding the threat of danger to the safety and well-being of Cummings, despite having actual and subjective knowledge, through the incident report generated for all violent incidents pursuant to ADOC policy, that he was the target of violence of a convicted killer, and failed to train and supervise the employees and inmates to the degree that constitutes a ADOC and St. Clair Correctional Facility policy or custom of not adequately responding to incidents which occur over the weekend. **Consequently, Warden Davenport is liable for this claim.**

V. DAMAGES

Cummings died as the result of the acts and omissions of the Defendants. Additionally, Plaintiff, Angela Gaines has suffered extreme emotional distress from seeing the life of her son taken before her very eyes. The Defendants, jointly and severally, are liable for these damages.

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PRAYER FOR RELIEF

Based on the legal and factual assertions stated in this Complaint, **Plaintiffs** request the following relief:

- a) That this Court render a judgment finding ALL the Defendants named herein jointly and severally liable for the aforementioned causes of action;
- b) That this Court issue an Order requiring the Defendants to pay the Plaintiffs compensatory, nominal, and punitive damages;
- c) That this Court issue an Order requiring the Defendants to pay for all litigation costs, expenses, and reasonable attorney's fees associated with the filing of this action;
- d) Any other relief that the Plaintiffs may be entitled to.

JURY TRIAL DEMANDED

Plaintiff requests a trial by jury.

DATED this the 5th day of October, 2016.

/s/ Thomas Putnam
Thomas Putnam, Esq. AOC# PUT011
Attorney for the Plaintiff

Of-Counsel:

The Revill Law Firm
2027 2nd Avenue North
Bradford Building, Suite A
Birmingham, Alabama 35203
(205) 521-9929
tputnam@revilllawfirm.com

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CERTIFICATE OF SERVICE

I hereby certify that I have on this 5th day of October, 2016, filed the foregoing using the CM/ECF electronic filing system which will send notification of such filing to the following parties:

Luther Strange
Anne A. Hill
Elizabeth A. Sees
Alabama Department of Corrections
301 South Ripley Street
P.O. Box 301501
Montgomery, Alabama 36130

H. Lanier Brown, II
Huie, Fernambucq & Stewart
2801 Highway 280 South, Suite 200
Birmingham, Alabama 35223

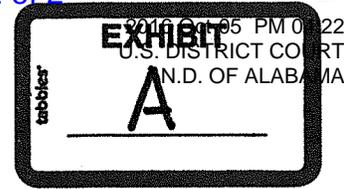
David R. Mellon
Cary T. Wahlheim
The University of Alabama System
UAB Office of Counsel
1720 2nd Avenue South, Suite AB 820
Birmingham, AL 35294-0108

/s/ Thomas Putnam

Thomas Putnam

10/5/2016

Convicted killer fighting for life after stabbed in Alabama prison



Convicted killer fighting for life after stabbed in Alabama prison

Carol Robinson | crobinson@al.com By Carol Robinson | crobinson@al.com

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on January 06, 2014 at 3:08 PM, updated January 06, 2014 at 3:58 PM



Marquette Cummings

BIRMINGHAM, Alabama - A convicted killer is fighting for his life after he was stabbed earlier Monday during a fight at St. Clair County Correctional Facility.

Marquette Cummings, 24, is listed in critical condition at UAB Hospital, according to a hospital spokeswoman. Cummings, convicted in Jefferson County, was airlifted to the hospital after the morning fight inside the prison.

Cummings was **stabbed by another inmate**. The fight, said DOC spokesman Brian Corbett, was carry over from an incident between the same two inmates this past weekend. Timothy Gayle, another convicted killer out of Dallas County, is the suspect in the stabbing.

Corbett said Gayle admitted to stabbing Cummings, but claimed it was in self-defense. Cummings was bothering Gayle's cell mate, an older inmate who is not a troublemaker, Corbett said. Gayle defended the older man, and he and Cummings got into a disagreement over the weekend. It resurfaced again on Monday. The stabbing remains under investigation.

The fight and subsequent stabbing was not in any way linked to **ongoing protests at the St. Clair and Holman prisons**. Since New Year's Day, at least some prisoners have refused to work in kitchen and laundry areas and perform other jobs. Corbett said some prisoners want pay for their work. Prisoners have also voiced concerns about the court system. The protests, Corbett said, have been peaceful. Prisoner movement has been restricted at the St. Clair prison.

Cummings was originally charged with capital murder in the 2007 shooting death of Conoard Norris. He, along with four others including his brother Marcell Cumming, were accused of killing Norris in a parking lot on Bush Boulevard in Ensley. Also charged were Gaivan Paige, Traon Call and Ali Buford.

The disagreement started when Norris disrespected Paige by saying he was wearing fake designer jeans and jewelry. Paige responded by pulling a gun, according to testimony from trials held in 2009. That prompted Norris to drive to 22nd Street near Ensley, where Paige and Call hung out. Norris threatened to shoot up the block.

Instead, several men gathered guns, jumped into two cars and drove around looking for Norris. When they spotted him coming out of a convenience store, Norris ran to his car in vain to attempt to escape as the gunmen closed in and started shooting. Testimony showed of the 41 bullets fired at Norris, 30 of the rounds came from an AK-47 military-style rifle that was linked to Marcell Cummings.

Paige and the Cummings brothers pleaded guilty to a reduced charge of intentional murder and were sentenced to life in prison with the possibility of parole. A jury in 2009 found Call not guilty. Also in 2009, the case against Buford was

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Convicted killer fighting for life after stabbed in Alabama prison

dropped.

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