

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED
JUN 24 2005

Michael N. Milby, Clerk of Court

██████████ AND
Plaintiffs,

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VS.

CIVIL ACTION NO. H-04-2442
JURY DEMANDED

THE TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, ED OWEN, PAMELA WILLIAMS,
GARY GOMEZ, DOUGLAS DRETKE,
GARY JOHNSON, AND JANIE COCKRELL
Defendants.

PLAINTIFFS' THIRD AMENDED COMPLAINT

Plaintiffs, ██████████ and ██████████, complain of Defendants Texas
Department of Criminal Justice, Ed Owen, Gary Johnson, Douglas Dretke, Gary Gomez, Pamela
Williams, and Janie Cockrell, and for causes of action would show the following:

I.

Jurisdiction and Venue

1. This claim arises under Title VII of the Civil Rights Act of 1964, and 42 U.S.C.
§§ 2000e- *et. seq.*, which prohibit employers from discriminating against an employee on the
basis of their sex or retaliating against an employee for reporting a violation of prohibited
conduct. This case is further brought to redress the deprivation, under color of state law,
ordinance, regulation, and custom or usage, of rights, privileges and immunities secured to
Plaintiffs under the First and Fourteenth Amendments of the United States Constitution and 42
U.S.C. § 1983. The Court has jurisdiction over all Defendants under 28 U.S.C. § 1331 and 1343

and pendent jurisdiction under 28 U.S.C. § 1367 for the state law causes of action. All individual Defendants are sued in their official and individual capacities.

2. Plaintiff [REDACTED] timely filed a charge of sexual harassment with the Equal Employment Opportunity Commission ("EEOC"). The EEOC has issued a notice of right to sue. Exh.1. Plaintiff [REDACTED] has exhausted all administrative remedies and prerequisites to filing suit has been met.

3. TDCJ employs more than 15 employees and is thus subject to Title VII, 42 U.S.C. § 2000e(b).

4. Venue is proper in the Houston Division of the Southern District of Texas under any three of the alternatives provided by 42 U.S.C. § 2000e-5(3) and 28 U.S.C. § 1391. The unlawful employment practices occurred in the Houston Division; the employment records relevant to such practice are maintained and administered in the Houston Division, and Plaintiffs worked in the Houston Division. *Id.*

II.

Parties

5. Plaintiff [REDACTED] is a citizen of the state of Texas and resides in San Jacinto County. Plaintiff [REDACTED] is a citizen of the state of Texas residing in Walker County, Texas. During the relevant time period, they were employed by the Defendants.

6. Defendant Janie Cockrell is a retired employee of Texas Department of Criminal Justice. No service is necessary at this time.

III.

Statement of the Case

7. [REDACTED] Plaintiff [REDACTED] was employed at Defendant TDCJ in the Classification Division from 1995 until January 2004, when she resigned. In 2000, her supervisor, Salvador Buentello, began to make offensive, unwanted sexual comments to her. He continually made sexual advances. He later touched her inappropriately, grabbed her breasts, exposed himself to her, and on more than one occasion, pinned her down in what she believed to be an attempt to rape her. Plaintiff [REDACTED] does not recall the specific dates of all the assaultive events, but does recall that the last time he attempted to grab her breasts was on or about August 28, 2003. He called her at home multiple times for nonofficial reasons, and followed her in his vehicle around Huntsville, Texas. She rejected his advances and he threatened frivolous discipline. She was transferred to the Byrd Unit, and assigned different work hours. Ultimately, on August 28, 2003, she was terminated from the Classification Division. She applied for another position in Classification and another individual with less experience was hired. Plaintiff [REDACTED] was ultimately rehired into another position at a lower rate of pay. The sexually inappropriate conduct and harassment ended on August 28, 2003, after she was terminated from her position in Classification at TDCJ.

8. She reported his conduct to her immediate supervisor, Henry Henderson in October 2001, but no action was taken against Buentello.

9. [REDACTED] Plaintiff [REDACTED] was an employee of Defendant TDCJ in the Classification Division from 1994 until 1999. Buentello was her supervisor. After she separated from her husband and began the process of a divorce, Buentello made improper,

sexually offensive comments to her. He asked her if she was still having sexual relations with her husband. He told her that he wanted her to provide him with sexually explicit photographs of herself, and requested them on a daily basis. She was offended by the questions and the sexual innuendo and reported this behavior to TDCJ's Equal Employment Opportunity ("EEO") office in approximately 1997. After she made the report, she was disparaged, harassed, and labeled as a troublemaker. In retaliation for her report of violations of law, she was moved from position to position, and her work received undue scrutiny. She ultimately resigned in 1999 as result of the harassment. Later, after she and her husband remarried, she again sought employment with TDCJ in the Classification Division in 2002. She was not rehired.

10. Each individual Defendant had the authority and ability to order Buentello to cease his sexually harassing and retaliatory behavior, and failed to act. After each Defendant obtained information and located witnesses and reports regarding Buentello's conduct, they not only failed to act, they allowed his conduct to continue.

11. Defendant Johnson had knowledge of the sexual harassment and sexually hostile work environment created by Buentello. He was put on notice regarding the long history of sexual harassment and retaliation committed by Buentello by the EEO because the multiple women filed EEO claims alleging sexual harassment and retaliation by Buentello. Defendant Johnson received copies of the dispositions of these cases from the EEO.

12. Defendant Owen was told specifically about the sexually harassing and assaultive conduct of Buentello in late 1999 or early 2000 by TDCJ employee Allyson Glass. ██████ told Glass that they needed help handling Buentello, and Glass told her that she had spoken to Defendant Owen, that he had known about the sexual harassment, and that he said that he could

not do anything unless the victims filed complaints with EEO. Glass also said that she had heard TDCJ upper management discussing Buentello, and that Defendant Johnson stated that the only person who could not be replaced in TDCJ was Buentello. Immediately prior to [REDACTED] giving her statement to OIG, Glass begged her not to report that either she or Defendant Owen knew about the harassment, or they would lose their jobs. Defendant Owen also had knowledge of the sexual harassment and sexually hostile work environment created by Buentello, because he was put on notice regarding the long history of sexual harassment and retaliation committed by Buentello by the EEO because the multiple women filed EEO claims alleging sexual harassment and retaliation by Buentello. Defendant Owen received copies of the dispositions of these cases from the EEO.

13. Defendant Gomez was a personal friend of Buentello and had knowledge of his sexually harassing and assaultive conduct and also failed to make any effective changes to prohibit Buentello from assaulting women under his supervision. He did, however, promote Defendant Williams to the position of Manager of Classification and Records, and assign her the extra responsibility to “keep Buentello under control.” Clearly, he knew he had a duty to protect the female employees under his supervision, but his method was insufficient and ineffectual.

14. Defendant Williams knew of Buentello’s assault, sexually harassing conduct, because she had been told by her supervisor, Defendant Gomez, to “keep Buentello under control.” Not only did she did not accomplish this goal, she refused to allow Plaintiff [REDACTED] to tell her about Buentello’s conduct. Plaintiff [REDACTED] scheduled an appointment with her on March 24, 2002, to discuss another male employee who was making advances. During the

conversation, she attempted to tell her about the problems she experienced while under the supervision of Buentello, and she refused to listen and essentially told her to handle her problems the best way she could. It was clearly to Plaintiff [REDACTED] that Defendant Williams did not want to hear her report of Buentello's assaults.

15. Defendant Janie Cockrell was the Director of the Institutional Division of Defendant, TDCJ, and had knowledge of the sexual harassment and sexually hostile work environment created by Buentello. Victim [REDACTED] told Eva Perry, a current TDCJ employee and sister of Defendant Cockrell, that Buentello was sexually harassing her. Plaintiffs believe that Perry told Defendant Cockrell. She was also put on notice regarding the long history of sexual harassment and retaliation committed by Buentello by the EEO because the multiple women filed EEO claims alleging sexual harassment and retaliation by Buentello. Defendant Cockrell received copies of the dispositions of these cases from the EEO.

16. Defendant Dretke was put on notice regarding the long history of sexual harassment and retaliation committed by Buentello by the EEO because multiple women filed EEO claims alleging sexual harassment and retaliation by Buentello. Defendant Dretke received copies of the dispositions of these cases from the EEO.

17. All Defendants failed to take any actions to investigate, stop, and/or correct this unlawful behavior, in part, because they considered him a critical employee whose knowledge of Texas prison gangs was invaluable and made him irreplaceable. All Defendants failed to take any action to prevent further violations from occurring to the complaining parties or other female employees.

18. All Defendants supervised Buentello, and in addition to the reports they received

of his harassing and assaultive conduct, they were witnesses to his inappropriate, sexually tinged, off-color comments made frequently in the presence of female employees. The Office of the Inspector General ("OIG") told victims of Buentello that OIG had interviewed over 200 women who had either witnessed his conduct, had knowledge of his conduct, or been the victim of his conduct, and that because the numbers of witnesses were multiplying, they chose to cease taking statements of witnesses and victims after interviewing approximately 200 witnesses.

19. Buentello was indicted for three counts of felony sexual assault.

IV.

Plaintiff's Causes of Action Against Defendant TDCJ, and All Individual Defendants in Their Official Capacities

A. Sexually Hostile Work Environment Under Title VII

20. Plaintiff [REDACTED] alleges that Defendants subjected her to a sexually hostile work environment in violation of § 42 U.S.C. § 2000e-2.

21. Plaintiff is a member of a protected class – female.

22. As discussed in more detail in Section III., *supra*, Plaintiff was subjected to unwelcome verbal and assaultive conduct of a sexual nature.

23. Plaintiff would not have been subjected to the harassment but for her sex, as evidenced by the type of remarks and conduct directed towards her.

24. The harassment of which Plaintiff's complain was severe and pervasive and altered the terms and conditions of her employment and created a hostile and abusive work environment.

25. On more than one occasion, Defendants were notified of such conduct by her and other female TDCJ employees.

26. Defendants knew or should have known about the harassment and failed to take prompt and effective remedial action. Plaintiffs assert that Defendants acted intentionally and/or were deliberately indifferent in their decision to not properly investigate prior complaints against Buentello, not disciplining Buentello for prior improper conduct, not properly supervising Buentello after being on notice of conduct problems, including, but not limited to, prior acts of sexual harassment and not properly training/retraining Buentello after being made aware of the foregoing conduct.

B. Retaliation Under Title VII

27. Plaintiff [REDACTED] further alleges that Defendants retaliated against her for engaging in protected activity in violation of 42 U.S.C. § 2000e-3(a).

28. Plaintiff [REDACTED] opposed a discriminatory practice when she refused to submit to Buentello's advances. Plaintiff [REDACTED] was terminated from employment and was rehired at a lower rate of pay, as earlier described in Section I, paragraph 7.

**Plaintiffs' 42 U.S.C. § 1983 Causes of Action Against All Individual Defendants
in their Individual Capacities**

C. Violation of Substantive Due Process Under the United States
Constitution

24. As discussed in more detail in Section III., *supra*, all Plaintiffs allege that they were deprived of their substantive rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

25. The aforementioned deprivations were done under color of state law, ordinance, regulation, and custom or usage.

26. All individual Defendants are liable in their individual capacities because their

actions were committed while acting under color of state law. Plaintiffs assert that Defendants acted intentionally and/or were deliberately indifferent in their decision to not properly investigate prior complaints against Buentello, not disciplining Buentello for prior improper conduct, not properly supervising Buentello after being on notice of conduct problems, including, but not limited to, prior acts of sexual harassment and not properly training/retraining Buentello after being made aware of the foregoing conduct.

D. Violation of Equal Protection Under the United States Constitution

27. As discussed in more detail in Section III., *supra*, all Plaintiffs allege that they were deprived of their rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

28. Plaintiffs suffered unequal treatment and harassment based upon their gender.

29. The aforementioned deprivations were done under color of state law, ordinance, regulation, and custom or usage.

30. Individual defendants are liable in their individual capacities because their actions were committed while acting under color of state law. Plaintiffs assert that Defendants acted intentionally and/or were deliberately indifferent in their decision to not properly investigate prior complaints against Buentello, not disciplining Buentello for prior improper conduct, not properly supervising Buentello after being on notice of conduct problems, including, but not limited to, prior acts of sexual harassment and not properly training/retraining Buentello after being made aware of the foregoing conduct.

E. Retaliation Under the United States Constitution

31. Plaintiffs [REDACTED] and [REDACTED] allege that they were retaliated against for

exercising their rights under the First Amendment to the United States Constitution.

32. Plaintiff [REDACTED] exercised her First Amendment right to free speech when she reported the aforementioned civil and constitutional violations to Defendants, and she was terminated and rehired at a lower rate of pay. As earlier described in Section I, paragraph 7, the aforementioned adverse employment action and harassment occurred because Plaintiff [REDACTED] exercised her right to free speech on a matter of public concern under the United States Constitution.

33. Plaintiff [REDACTED] exercised her First Amendment right to free speech when she reported the aforementioned civil and constitutional violations to Defendants and she was not rehired, as earlier described in Section I, paragraph 9. The aforementioned adverse employment action and harassment occurred because Plaintiff [REDACTED] exercised her right to free speech on a matter of public concern under the United States Constitution.

34. All individual Defendants are liable in their individual capacities because their actions were committed while acting under color of state law. Plaintiffs assert that Defendants acted intentionally and/or were deliberately indifferent in their decision to not properly investigate prior complaints against Buentello, not disciplining Buentello for prior improper conduct, not properly supervising Buentello after being on notice of conduct problems, including, but not limited to, prior acts of sexual harassment and not properly training/retraining Buentello after being made aware of the foregoing conduct.

**Plaintiffs' Causes of Action Against All Individual Defendants
in their Individual Capacities**

F. Assault

35. Plaintiff [REDACTED] was touched inappropriately and without her consent by Buentello, as described more fully in Section I, paragraph 7. Such conduct constitutes assault. All individual Defendants are liable for the assaultive conduct of Buentello.

V.

RELIEF SOUGHT

36. As a proximate cause of the foregoing, Plaintiffs [REDACTED] and [REDACTED] have suffered damages and seek the following relief from all individual Defendants:

- a. Lost past wages and benefits;
- b. Lost future wages and benefits;
- c. Compensatory damages;
- d. An Order directing the Defendants to pay Plaintiffs exemplary damages for their conduct in an amount as yet to be ascertained;
- e. Awarding Plaintiffs such other relief, legal or equitable, as may be warranted;
- f. Plaintiffs further seek pre- and post-judgment interest, costs of court, attorney's fees and litigation expenses for trial and appeal; and
- g. Punitive damages.

37. As a proximate cause of the foregoing, all Plaintiffs have suffered damages and seek the following relief from Defendant TDCJ:

- a. A declaration that the acts and practices complained of in this Complaint are in violation of the United States Constitution, 42 U.S.C. §1983, and the common law of the State of Texas;
- b. An injunction permanently restraining these violations of the United States Constitution, 42 U.S.C. §1983, and the common law of the State of Texas;

- c. An order specifically prohibiting further retaliatory actions against the Plaintiffs;
- d. Lost past wages and benefits;
- e. Compensatory damages;
- f. Awarding her such other relief, legal or equitable, as may be warranted;
- g. Plaintiffs further seek pre- and post-judgment interest, costs of court, attorney's fees and litigation expenses for trial and appeal.

WHEREFORE, Plaintiffs request that upon trial of this cause, that Plaintiffs have judgment as authorized by law, and Plaintiffs further request general relief.

Jury Demand

Plaintiffs request a jury trial on all questions of fact raised by their complaint.

Respectfully Submitted,

LAW OFFICE OF KATHLEEN L. DAY
P. O. Box 1517
Corpus Christi, Texas 78403-1517
Telephone: (361) 888-4342
Facsimile: (361) 883-3433

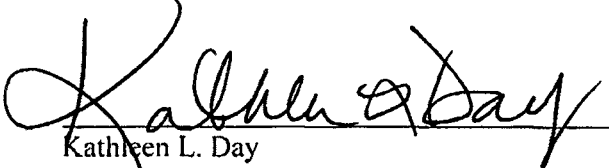
By: 

Kathleen L. Day
State Bar No. 05610300
Federal I.D. No. 13976

ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of June, 2005, a true and correct copy of the foregoing document was served on all parties as indicated below:


Kathleen L. Day

U. S. First Class Mail

Mr. Adrian L. Young
Assistant Attorney General
P. O. Box 12548, Capitol Station
Austin, Texas 78711

U. S. First Class Mail

Ms. Cynthia Lee Alexander
Assistant Attorney General
Litigation Services Section
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548