

VIRGINIA:

IN THE CIRCUIT COURT FOR PORTSMOUTH COUNTY

JUNE EVERETT, Personal Representative)
of Sandra M. Kenley (deceased) and)
Administrator of her Estate,)

Plaintiff,)

v.)

Case No. _____

ROY CHERRY, Superintendent)
Hampton Roads Regional Jail)
2690 Elmhurst Lane)
Portsmouth, Virginia 23701)

and)

DAVID L. SIMONS,)
Assistant Superintendent)
Hampton Roads Regional Jail)
2690 Elmhurst Lane)
Portsmouth, Virginia 23701)

and)

MARK A. GOOCH,)
4521 Uppingham Road)
Richmond, Virginia 23235-1139)

and)

MAJOR M.A. BENNETT,)
Deputy Superintendent)
Pamunkey Regional Jail)
7240 Courtland Farm Road)
Hanover, Virginia 23069)

and)

JOHN DOES 1-10)

Defendants.)

COMPLAINT

Plaintiff, June Everett, Personal Representative of Sandra M. Kenley, deceased, and
Administrator of her Estate, *pro se*, hereby files this Complaint against defendants Roy Cherry,

Superintendent of the Hampton Roads Regional Jail, Mark A. Gooch, former Superintendent of the Pamunkey Regional Jail, Major M.A. Bennett, Deputy Superintendent of the Pamunkey Regional Jail, and John Does 1-10.¹ In support thereof, plaintiff states as follows:

PARTIES

1. Plaintiff June Everett is the Personal Representative of Sandra M. Kenley, deceased, and Administrator of her Estate. Ms. Everett is a resident of the State of Maryland.

2. Defendant Roy Cherry ("Cherry") is, and was at all times relevant to this action, the Superintendent of the Hampton Roads Regional Jail ("HRRJ"). As Superintendent, Cherry was directly responsible for the care and medical treatment received by detainees at HRRJ. He is being sued in his individual capacity.

3. Defendant David L. Simons ("Simons") is, and was at all times relevant to this action, the Assistant Superintendent of the Hampton Roads Regional Jail ("HRRJ"). As Assistant Superintendent, Simons was directly responsible for the care and medical treatment received by detainees at HRRJ. He is being sued in his individual capacity.

4. Defendant Mark A. Gooch ("Gooch") was, at all times relevant to this action, the Superintendent of the Pamunkey Regional Jail ("PRJ"). As Superintendent, Gooch was responsible for the overall management of PRJ and had authority over all its employees.

¹ Although plaintiff is filing this case *pro se*, the law firm of DiMuro Ginsberg, P.C., 908 King Street, Suite 200, Alexandria, Virginia 22314 assisted plaintiff with the preparation of this Complaint in order to ensure that plaintiff did not miss the statute of limitations on her claims. DiMuro Ginsberg, P.C. has only recently received plaintiff's file and is reviewing the case. Counsel has informed plaintiff that once she receives medical and detention records from the Hampton Roads Regional Jail ("HRRJ"), only then can it decide whether to represent her in this law suit. Counsel notes that Plaintiff requested records from HRRJ in July 2007, August 2007, and on or about September 26, 2007. HRRJ had refused, however, to provide the requested records. HRRJ has just recently agreed to produce Ms. Kenley's medical records.

Accordingly, Gooch was directly responsible for the care and medical treatment received by detainees at PRJ. He is being sued in his individual capacity.

5. Defendant Major M. A. Bennett ("Bennett") is, and upon information and belief, was at all times relevant to this action, the Deputy Superintendent of PRJ. As Deputy Superintendent, Bennett exercises authority over the day-to-day operation of PRJ and supervises PRJ's Medical Department. Accordingly, Bennett was directly responsible for the care and medical treatment received by detainees at PRJ. He is being sued in his individual capacity.

6. Defendants John Does 1-10 are the physicians, nurses, medical staff, employees, officers, directors, managing agents, and/or supervisors at HRRJ and PRJ who were responsible for Sandra M. Kenley's medical care and/or treatment. Their true names and capacities are presently unknown to Plaintiff.

7. The deceased, Sandra M. Kenley ("Ms. Kenley") was a citizen of Barbados and had been a lawful permanent resident of the United States since 1978. At the time of her death, Ms. Kenley was a resident of the District of Columbia.

FACTUAL ALLEGATIONS

8. On September 2, 2005, Ms. Kenley and her year and a half old granddaughter were *en route* home from a trip to Barbados. Upon reaching the Miami International Airport, Ms. Kenley applied for admission as a returning lawful permanent resident. U.S. Immigration and Customs Enforcement ("ICE") officials detained Ms. Kenley on account of an old misdemeanor charge, for which she had served and completed probation in 2003.

9. Because she had her young granddaughter with her, ICE officials allowed Ms. Kenley to proceed to the Dulles International Airport.

10. Ms. Kenley was instructed to appear at an administrative proceeding before an immigration judge on November 2, 2005.

11. Ms. Kenley dutifully appeared two months later at the administrative proceeding held on November 2, 2005. At this hearing, Ms. Kenley informed the Immigration Inspector, Shelly Waddell, that she was not presently working due to a disability. Specifically, in regards to her medical condition, Ms. Kenley informed the Immigration Inspector that she had an extremely large fibroid tumor (which was scheduled to be surgically removed the next month), which caused her to hemorrhage on a daily basis. Additionally, Ms. Kenley informed the Inspector that she was taking Crestar for her high cholesterol and Diovan for her high blood pressure.

12. The Immigration Inspector found Ms. Kenley inadmissible to the United States under § 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act ("INA") as an alien who has been convicted of a law relating to a controlled substance.

13. This finding was based on the fact that in 2002, Ms. Kenley had been convicted of attempted possession of cocaine in the District of Columbia. She served probation for this charge from November 2, 2002 until September 8, 2003, when her probation was terminated early based on her successful completion of a drug treatment program.

14. Ms. Kenley had not been on probation or otherwise in trouble with the law since September 8, 2003. Following her misdemeanor arrest, Ms. Kenley had turned her life around. She had overcome her drug addiction, completed a nursing program, and was raising her granddaughter.

15. The Immigration Inspector informed Ms. Kenley that she was being placed in removal proceedings and that she would be detained pending a hearing.

16. On November 2, 2005, Ms. Kenley was taken into custody at the Dulles International Airport and held as an immigration detainee until her death on December 18, 2005.

17. Upon information and belief, ICE has contracts with PRJ and HRRJ, pursuant to which the two regional jails house immigration detainees for ICE.

18. From on or about November 2, 2005 until on or about November 29, 2005, Ms. Kenley was housed at the Pamunkey Regional Jail ("PRJ") in Hanover, Virginia.

19. Throughout her detention at PRJ, Ms. Kenley notified jail officials about her serious medical problems, including but not limited to, her high blood pressure, lightheadedness, high cholesterol, daily hemorrhaging, and need for surgery. During this period, Ms. Kenley received inadequate medical care which caused her health to significantly deteriorate.

20. Specifically, while detained at PRJ, Ms. Kenley was denied her proper blood pressure and cholesterol medication despite her repeated requests for such.

21. On November 21, 2005, there is a medical note which indicates that Ms. Kenley had an irregular heartbeat. Moreover, an EKG was performed on Ms. Kenley which revealed irregularities. The note states that a physician "will have to evaluate." Despite this notation, there is no indication in the records that Ms. Kenley was seen by a physician thereafter.

22. On information and belief, Ms. Kenley was transferred from PRJ to HRRJ in Portsmouth, Virginia on or about November 29, 2005. Ms. Kenley remained at HRRJ as an immigration detainee until her death on December 18, 2005. On information and belief, throughout her detention at HRRJ, Ms. Kenley notified jail officials about her serious medical problems, including but not limited to, her high blood pressure, lightheadedness, high

cholesterol, daily hemorrhaging, and need for surgery. During this period, Ms. Kenley received inadequate medical care which caused her health to significantly deteriorate.

23. Despite her serious medical conditions, Ms. Kenley was assigned to a top bunk in her cell at HRRJ.

24. Upon information and belief, while detained at HRRJ, Ms. Kenley was denied her proper blood pressure and cholesterol medication.

25. In a letter written to her sister shortly before her death, Ms. Kenley wrote: "They [sic] suppose to get my regular medicine that I haven't gotten yet. My pressure was 186 over 120 I am bearily [sic] living [...] trying to hold on until you get a lawyer to help me."

26. On December 18, 2005, Ms. Kenley passed out, face down, in her cell at HRRJ. Despite her cell mate's calls for help, no jail personnel responded for approximately twenty (20) minutes.

27. Thereafter, EMS was contacted and transported Ms. Kenley to the Maryview Medical Center where she was pronounced dead at 4:33 p.m.

28. Ms. Kenley died on December 18, 2005 as a direct result of the lack of adequate medical care that she received throughout her period of detention.

29. Per Virginia Code § 8.01-195.6, Plaintiff filed "notices of claim" with the Commonwealth of Virginia and the local governments that operate PRJ and HRRJ.

COUNT ONE

**Wrongful Death Claim Va. Code § 8.01-244
Against All Defendants**

30. The allegations of paragraphs 1-28 are incorporated herein by reference as though fully set forth here.

31. As a direct and proximate result of the conduct and actions of the Defendants, Ms. Kenley died on December 18, 2005.

32. Ms. Kenley died intestate survived by her sister, June Everett, the Plaintiff, as well as two statutory beneficiaries: Jamal D. Kenley (her son) and Nicole O. Kenley (her daughter).

33. Plaintiff and said beneficiaries have sustained financial and pecuniary loss as a result of the death of Ms. Kenley and have suffered severe mental anguish at the loss of her company.

34. Plaintiff claims damages against Defendants on behalf of said beneficiaries:

- a. for pecuniary and financial loss suffered by the beneficiaries;
- b. sorrow, mental anguish and solace including society, companionship, comfort, guidance, kindly offices and advice of the decedent;
- c. compensation for reasonably expected loss of income of the decedent and services, protection, care and assistance provided by the decedent;
- d. reasonable funeral expenses; and
- e. pain and suffering of decedent as a result of Defendants' conduct until the time of her death.

35. Defendants' conduct was so willful, wanton, or reckless as to evince a conscious disregard for the health, safety and rights of Ms. Kenley.

WHEREFORE, plaintiff June Everett, as Personal Representative of Sandra M. Kenley, deceased, and Administrator of her Estate, demands judgment against the defendants, jointly and severally, for wrongful death under Va. Code § 8.01-244, in the following amounts:

- a. compensatory damages in the amount of Two Million Dollars (\$2,000,000.00), with interest thereon from December 18, 2005 until paid;
- b. punitive damages in the amount of Three Hundred and Fifty Thousand Dollars (\$350,000.00), with interest thereon from December 18, 2005 until paid;
- c. her costs expended in this behalf; and
- d. such further relief as this Court may deem just and proper .

COUNT TWO

**42 U.S.C. § 1983 - Violation Of Eighth And Fourteenth Amendment Rights
Under the United States Constitution Against All Defendants**

36. The allegations of paragraphs 1-34 are incorporated herein by reference as though fully set forth here.

37. This claim is brought under 42 U.S.C. § 1983. Defendants violated Ms. Kenley's right to adequate medical care under the Eighth and Fourteenth Amendments of the United States Constitution by failing to appropriately treat Ms. Kenley's known serious medical conditions and failing to appropriately respond to her medical emergency.

38. Each of these Defendants was acting under color of law by exercising power made possible because the Defendants were clothed with the authority of state law.

39. Each of these Defendants acted with deliberate indifference to Ms. Kenley's

serious health needs protected by the Eighth and Fourteenth Amendments to the United States Constitution. The conduct constituted cruel and unusual punishment and a violation of due process.

40. Defendants violated clearly established law by acting with deliberate indifference in failing to adequately treat and/or diagnose a known serious medical condition and in failing to adequately respond to Ms. Kenley's medical emergency despite her cell mate's cries for help.

41. As a result of these Defendants' constitutional violations of Ms. Kenley's rights, Plaintiff sustained injuries and damages as set forth above.

42. The conduct of each of these Defendants constitutes a reckless or callous disregard of Ms. Kenley's constitutional rights, entitling Plaintiff to punitive damages.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, June Everett, Personal Representative of Sandra M. Kenley (deceased) and Administrator of her Estate, demands judgment against the defendants, jointly and severally, in the following amounts:

- (1) Compensatory damages in the amount of Two Million Dollars (\$2,000,000.00), with interest thereon from December 18, 2005 until paid;
- (2) Punitive damages in the amount of Three Hundred and Fifty Thousand Dollars (\$350,000.00), with interest thereon from December 18, 2005 until paid;
- (3) Her costs expended in this behalf; and
- (4) Further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

Respectfully submitted,

June Everett

JUNE EVERETT,

Personal Representative of Sandra M. Kenley
and Administrator of her Estate

Pro se