

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

DENNIS BARGHER, JR.,

Plaintiff,

– Versus –

SHERIFF DANIEL EDWARDS, in his
official capacity, CAPTAIN JOYCE
JACKSON, SEAN SWEENEY and
REGINALD GOLDSBY, MD, in their
official and individual capacities.

Defendants.

Case. No: 12-cv-2559

Judge:

Magistrate Judge:

Jury Trial Requested

COMPLAINT

I. INTRODUCTION

Plaintiff Dennis Bargher, Jr. is a young man with a long history of schizophrenia, schizo-affective disorder, bipolar disorder and severe depression, who, following a 2009 arrest and eventual conviction, was confined to Tangipahoa Parish Jail (TPJ) for nearly two years without medical treatment of any kind. The abuse was deliberate: jail and parish officials not only ignored the clear recommendations of Bargher's psychiatrists, but also disregarded a court order for treatment. They denied Bargher his prescription medication as he descended into hallucinations and delirium, held him in solitary confinement for weeks and months at a time, and regularly withheld food until he had lost almost half his body weight.

TPJ officials hid Bargher from the public, from government oversight and

from his own family for nearly two years, but by December 2011, too many people had inquired into Bargher's condition, and his jailers could no longer conceal their misdeeds. Afraid of what would happen if their repugnant behavior was brought fully to light, TPJ officials transferred Bargher – psychotic, enfeebled and emaciated – to Elayn Hunt Correctional Center, where he began a long recovery process that continues today.

Bargher now brings an action under 42 U.S.C. §1983. He seeks monetary damages and declaratory relief for TPJ's violation of his Eighth Amendment Rights. He seeks the same relief under the Americans with Disabilities Act, 42 U.S.C. 12101 *et. seq.*, and Section 504 of the Rehabilitation Act, 29 U.S.C. §794. Lastly, he brings pendent state law claim(s) of negligence, intentional infliction of emotional distress, negligent infliction of emotional distress and respondeat superior.

II. JURISDICTION

1. This Court has subject matter jurisdiction under 28 U.S.C. §1331 because this action arises under the Constitution and laws of the United States, and under 28 U.S.C. §1343(a)(3) because this action seeks to redress the deprivation, under color of state law, of civil rights.

2. Supplemental jurisdiction is invoked pursuant to 28 U.S.C. §1367 as to matters cognizable under the Constitution and laws of this State, particularly, but not exclusively, LSA-C.C. Arts. 2315, 2316, 2317 and 2320.

3. Venue is appropriate under 28 U.S.C. §1391(b)(2) because a substantial number of the events giving rise to this Complaint occurred in this district.

III. PARTIES

Plaintiff

4. Plaintiff Dennis Bargher, Jr., a person with a disability by reason of a severe mental illness, resided in Tangipahoa Parish at all times pertinent to the action. Except for the seven months that Mr. Bargher was undergoing treatment to restore him to competency at East Louisiana Mental Health System (ELMHS), he was incarcerated at the Tangipahoa Parish Jail from January 14, 2009 to December 22, 2011.

Defendants

5. Sheriff Daniel Edwards is the Sheriff of Tangipahoa Parish and, as such, is responsible for the hiring, training, supervision, discipline and control of the deputies under his command, as well as medical personnel. He is also responsible for the supervision, administration, policies, practices, customs and operations of the Tangipahoa Parish Sheriff's Office (TPSO) and the Tangipahoa Parish Jail (TPJ). He is a final policymaker. He is sued in his official capacity for those acts and omissions which occurred while he was Sheriff. He is a person of the full age of majority and, on information and belief, a resident of the Eastern District of Louisiana.

6. Reginald Goldsby, M.D. is the physician at the Tangipahoa Parish Jail. He acted as Supervisor to Nurse Sean Sweeney. At all pertinent times herein, he was responsible for the provision of medical care and health services for persons incarcerated in TPJ, both directly and as a supervisor. He was responsible for insuring that medications were administered properly to persons incarcerated at TPJ, including to Mr. Bargher. He is a person of full age and majority and, on

information and belief, is a resident of the Eastern District of Louisiana. He is sued in his official and individual capacity.

7. Sean Sweeney was a nurse at the Tangipahoa Parish Jail. At all pertinent times herein, he was responsible for the provision of medical care and health services for persons incarcerated in TPJ, both directly and as a supervisor. He was responsible for insuring that medications were administered properly to persons incarcerated at TPJ, including to Mr. Bargher. He is a person of full age and majority and, on information and belief, is a resident of the Eastern District of Louisiana. He is sued in his official and individual capacity.

8. Captain Joyce Jackson is the Assistant Warden at TPJ. She is responsible for assisting the Warden in the training, supervising, monitoring and disciplining of TPSO officers, including those named as defendants herein, overseeing the security and well-being of persons held on the wards. She is also responsible for coordination between security officers and medical personnel regarding prisoners in need of medical care. She is a person of full age and majority and, on information and belief, is a resident of the Eastern District of Louisiana. She is being sued in both her official and individual capacity.

IV. STATEMENT OF FACTS

9. For the last 15 years and up to the present day, Mr. Bargher has suffered from serious mental illnesses, including schizophrenia, bipolar disorder and severe depression.

10. On January 14, 2009, Mr. Bargher was arrested by Tangipahoa Parish Sheriff's deputies on a charge of carnal knowledge of a fifteen year old girl and taken to TPJ.

11. On January 29, 2009, TPJ officials took him to Rosenblum Mental Health Center (the TPJ's contractor for mental health services, RMHC).

12. At Rosenblum Mental Health Center, doctors noted that Mr. Bargher was incoherent and grossly disorganized in his thoughts. He was unable to give his medical history. He was given the "Global Assessment of Functioning" test, a scale used by mental health clinicians to assess the social and mental function of adults on a scale of zero to 100. Mr. Bargher scored a 20, indicating severely limited function. RMHC doctors diagnosed Mr. Bargher with schizophrenia and prescribed several anti-psychotic medications.

13. Upon his return to TPJ from RMHC, Defendants Sweeney and Goldsby intentionally failed or refused to ensure that Mr. Bargher was provided with the medication prescribed by the physicians at RMHC.

14. From the date of Bargher's incarceration until January 13, 2010, when he was transferred to East Louisiana Mental Health System (ELMHS), Defendants Sweeney and Goldsby intentionally denied Mr. Bargher almost¹ all of his prescribed medications.

15. As a direct and proximate result of Defendants Sweeney's and Goldsby's intentional failure or refusal to provide him with necessary medical treatment, Mr. Bargher's mental condition gradually deteriorated as his incarceration at TPJ continued. He suffered from severe auditory hallucinations, insomnia and paranoia.

16. The Louisiana Code of Criminal Procedure 641, et seq. provides for a mental examination by a sanity commission where the Court has reasonable ground

¹ Bargher received some medication for a four-week period between May and June 2009.

to doubt the competence of the defendant to defend criminal charges.

17. Mr. Bargher's public defender initiated an action for the appointment of a sanity commission to evaluate his competence to stand trial.

18. The Sanity Commission found Mr. Bargher incompetent to stand trial on October 7, 2009 and he was ordered to ELMHS for restoration. He was placed on a waiting list for a bed at ELMHS. Judge Ricks of the 21st JDC ordered that he immediately begin taking medications – by injection if necessary – while he waited for a bed at ELMHS.

19. Defendants Sweeney and Goldsby deliberately disregarded the judge's specific, unambiguous order. Any medication Mr. Bargher received was given sporadically.

20. As a direct and proximate cause of Defendants Sweeney and Goldsby withholding, or failing to provide him with, medication, Mr. Bargher suffered serious withdrawal symptoms known to be associated with psychotropic and anti-psychotic drugs.

21. A status hearing on Mr. Bargher's criminal charges was held on January 5, 2010, and Mr. Bargher was again found incompetent to stand trial. He was finally transferred to ELMHS for restoration on January 13, 2010.

22. Mr. Bargher spent the next seven months in the forensic unit of ELMHS. Upon admission he was diagnosed with schizophrenia.

23. Doctors at ELMHS began Mr. Bargher's restorative treatment with the antipsychotic drug Risperdal. Mr. Bargher cooperated with doctors as psychiatric medications were added to his regimen and slowly brought to the correct levels. Doctors carefully observed Mr. Bargher's response to the medications in order to try

to control his hallucinations and other symptoms of schizophrenia.

24. After seven months of therapy, doctors at ELMHS found that Mr. Bargher had shown significant improvement with his prescribed medication regime. Doctors at ELMHS discharged Mr. Bargher as competent to stand trial with the precaution that he continue to maintain a regimen of four psychiatric, antipsychotic, and anti-seizure medications:

- a. Cogentin, 1mg twice daily;
- b. Risperdal, 5mg once daily;
- c. Klonopin, 0.5 mg and 1.5 mg twice daily;
- d. Sertraline, 150 mg once daily.

25. The drugs prescribed to treat Mr. Bargher's schizophrenia are strong psychiatric medications that not only were required for Mr. Bargher's health, but, also, because they were essential to his restoration to legal competence: they allowed him to understand reality from hallucination; they silenced the incessant voices in his head; they allowed him to sleep and reduced the intense paranoia and anxiety that dogged every moment of his life.

26. Mr. Bargher was given a two-week supply of his drugs when he was discharged from ELMHS.

27. Mr. Bargher was re-booked into the TPJ on July 30, 2010, but without any medication.

28. Upon Bargher's return to TJP, Defendants Sweeney and Goldsby intentionally failed or refused to provide Mr. Bargher with the medications prescribed by ELMHS.

29. As a direct and proximate cause of the discontinuation of his

psychiatric and antipsychotic medications by Defendants Sweeney and Goldsby, Mr. Bargher's condition severely deteriorated. He became paranoid and suffered hallucinations. He was unable to communicate meaningfully with staff or other inmates due to the psychosis associated with his mental illness, exacerbated by the discontinuation of his psychiatric and antipsychotic medication. He was unable to access any of the services provided by the jail, including communication with his attorneys and family members, medical care, mental health care, and the administrative remedy procedure.

30. As a direct and proximate cause of the intentional withholding and/or discontinuation of his psychiatric and antipsychotic medications by Defendants Sweeney and Goldsby, Mr. Bargher became actively psychotic and unable to communicate with his attorney, jail staff or the Court.

31. Sheriff Daniel Edwards is the Sheriff of Tangipahoa Parish. He is responsible for the hiring, training, supervision, discipline and control of the deputies under his command, as well as medical personnel. He is also responsible for the supervision, administration, policies, practices, customs and operations of the TPSO and the TPJ. He is a final policymaker.

32. The TPJ acted with deliberate indifference towards the requirements of the Americans with Disabilities Act and Section 504 despite the fact that the Sheriff and TPJ receive federal funds and house federal prisoners.

33. The TPJ had no policy regarding inmates with mental illness or any other disability. By TPJ custom and practice, inmates with mental illness or other disabilities had to request necessary medical care in writing on a medical request form. The form would then be submitted to Defendant Sweeney. By TPJ custom and

practice, Defendant Sweeney addressed the request himself or contacted Defendant Goldsby for further medical assistance.

34. Despite a history of the mistreatment of inmates with mental illness and a recommendation to develop a program, the Sheriff made no attempt to institute new policies.

35. By TPJ custom and practice, inmates with mental illness were not segregated from the general population. The Sheriff could have prevented the injuries suffered by Mr. Bargher had he instituted new policies for mental healthcare and the segregation of inmates with mental illness.

36. The Sheriff could have prevented injury to Mr. Bargher by ensuring that Defendants Goldsby and Sweeney provided care in accordance with acceptable standards.

37. The Sheriff could have prevented injury to Mr. Bargher by properly supervising both Goldsby and Sweeney and monitoring their quality of work.

38. Defendant Goldsby was the supervisor of Defendant Sean Sweeney. It was his job to ensure that important medical matters were being referred to him and that Sean Sweeney was fulfilling his job duties as jail nurse.

39. Defendant Goldsby visited the jail several times a week to participate in sick call and confer with Mr. Sweeney on the medical issues of inmates. By TPJ custom and practice, Defendant Goldsby did not come to the jail unless called by Defendant Sweeney to do so.

40. Goldsby could have prevented the injuries suffered by Mr. Bargher had he simply fulfilled his role as jail physician, reviewed the files of inmates on psychotropic drugs, the files of inmates restored to competence, reviewed any files

or work whatsoever of Sean Sweeney.

41. On December 21, 2011, Mr. Bargher was finally returned to Rosenblum Mental Health Center for treatment.

42. At the time Mr. Bargher was returned to RMHC, Defendants had not provided him with any treatment since July 2010 when was released from ELMHS. As a result, he was grossly underweight, filthy, and suffered from disorganized thoughts and auditory hallucinations.

43. TPJ has no infirmary or segregation unit for inmates who are suicidal, homicidal or psychotic. As a direct and proximate cause of Defendants isolating Mr. Bargher for extended periods of time, Mr. Bargher's mental illness was exacerbated and he further decompensated.

44. Mr. Bargher was housed in a holding cell alone for three months, twenty-four hours a day. He was only allowed to leave his cell about every three days .

45. Defendants failed to monitor him or to protect him from other inmates in the general population. Jail staff often forced Mr. Bargher to share a cell with other inmates known to be dangerous. Mr. Bargher was beaten and mistreated by these inmates regularly.

46. Due to his mental illness and the lack of treatment for his mental illness, Mr. Bargher was unable to communicate with jail staff regarding his injuries or need for help.

47. At no time during Mr. Bargher's incarceration at the TPJ did jail staff act to protect Mr. Bargher from being injured by other prisoners, even though they knew or should have known that he was being beaten and mistreated.

48. Mr. Bargher asked for his medications in a written request but was told by Sean Sweeney that his medication was “no longer necessary now that your trial is over and you are in a controlled environment.”

49. Mr. Bargher made numerous appeals to Captain Joyce Jackson for mental health treatment. Captain Jackson knew that Mr. Bargher was being denied mental health treatment. Despite this knowledge, she ignored his requests for help. Officer Brandon Pinion told him to cease writing to the Captain as Sean Sweeney’s decision was final.

50. The TPJ has a history of failing to provide necessary care for people with mental illness like Mr. Bargher.

51. Through the time of Mr. Bargher’s incarceration at TPJ, Defendants failed to develop or implement adequate policies on the administration of psychotropic drugs.

52. By TPJ custom and practice, psychotropic drugs were administered by inmate trustees or correctional officers on duty. Record-keeping of the administration of psychotropic drugs was customarily lax.

53. Despite the knowledge that the jail was unable or unwilling to properly accommodate Mr. Bargher, the defendants did nothing within their power to prevent serious harm to Mr. Bargher.

54. Defendants knew, or should have known, that Mr. Bargher had been restored to competence by doctors as a result of the administration of psychopharma and that he had arrived back at TPJ with only two weeks of drug therapy. Defendants knew or should have known that new medications should then be procured through the physicians at RMHC. Defendants had the authority to contact

RMHC to get mental health treatment for Mr. Bargher, but failed to do so until December 21, 2011.

55. Defendants knew, or should have known, that Mr. Bargher was not being medicated as ordered, was actively psychotic and unable to communicate with his attorney, jail staff or the Court.

56. Defendants knew, or should have known, that the lack of adequate mental health treatment to persons with serious mental health problems incarcerated at the TJP is very likely to cause a deterioration of their psychological well-being and mental capacity to the point that rehabilitation becomes impossible.

57. Defendants knew, or should have known, that Mr. Bargher was seriously at risk of physical and mental harm in their facility.

58. Despite knowledge of the Mr. Bargher's mental health conditions, and the risks such conditions imposed on him, Defendants intentionally or with deliberate indifference failed or refused to take any special precautions that were in their power to ameliorate or eliminate Mr. Bargher's obvious risk of harm relative to his history of mental illness and observable psychotic behavior.

59. At the time of Mr. Bargher's incarceration, the Defendants knew, or should have known, that there existed continuing serious deficiencies in policies, practices and procedures at the jail related to psychiatric care, the observation of prisoners with mental illness and the administration of psychotropic medication.

60. Defendants knew, or should have known, that the staff at TPJ was inadequate or unwilling to protect or provide adequate treatment to person with serious mental illness, and that staff that existed were inadequately trained or supervised with regard to addressing the psychiatric problems of prisoners.

61. Despite their knowledge of these serious deficiencies in policies, practices and procedures, and of the training and supervision of staff, Defendants acted with deliberate indifference by failing to take appropriate action to address and ameliorate these deficiencies.

62. Despite Defendants' knowledge of Mr. Bargher's disabilities, no measures were taken to provide him with reasonable accommodations so he could receive the treatment and services he need to protect him from harm.

63. Defendants, at all times relevant to this complaint, acted under color of state law.

64. Defendants, at all times relevant to this complaint, acted with deliberate indifference to Mr. Bargher serious mental health needs.

65. As a direct and proximate result of the foregoing, Dennis Bargher, Jr. has suffered significant damage to his mental and physical health. Defendants' actions and inactions were the moving force behind Mr. Bargher's mental and physical injuries.

66. Currently, Mr. Bargher is serving an eight year prison term at Elayn Hunt Correctional Center.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION

8th Amendment – 42 U.S.C. 1983

67. The actions and inactions of defendants, as set forth above, were deliberately indifferent to Mr. Bargher's Eighth Amendment rights in that said defendants failed to provide Mr. Bargher with adequate medical and psychiatric attention to his serious medical and psychiatric needs during his incarceration by

failing to provide for necessary psychiatric care, by denying him access to necessary mental health medications and care, by failing to take adequate steps to ensure that he would not be injured while at the TPJ, by failing to provide adequate food, hygiene and housing, and by failing to act to redress his injuries or protect him from future harm.

68. As a direct result of the actions and inactions of defendants, Mr. Bargher endured and suffered severe physical and emotional distress.

SECOND CAUSE OF ACTION

Americans with Disabilities Act

69. Mr. Bargher is a qualified individual with a disability as defined in the ADA and Section 504. He has mental impairments that substantially limit one or more major life activity, including but not limited to interacting with other people, communicating his needs, taking care of himself or managing his medication. Mr. Bargher also has a record of having a disability, and is regarded as having such an impairment.

70. Defendant TPJ is a public entity as defined under 42 U.S.C 12131(1)(B).

71. Defendants, in denying Mr. Bargher access to medical and mental health treatment, on the same terms and conditions as provided other inmates in need of prescriptions for illnesses, subjected him to discrimination in violation of the Americans with Disabilities Act, 42 U.S.C. §12101 et. seq.

THIRD CAUSE OF ACTION

Section 504 of the Rehabilitation Act

72. The Tangipahoa Parish Sheriff receives federal financial assistance.

73. As a prisoner in the TPJ, Mr. Bargher meets the eligibility requirements for the receipt of services or the participation in programs or activities provided by Tangipahoa Parish Council and the TPJ.

74. Defendants, in denying Mr. Bargher access to medical and mental health treatment, on the same terms and conditions as provided other inmates in need of prescriptions for illnesses, subjected him to discrimination in violation Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

75. Defendants, in denying him access to medical and mental health treatment, on the same terms and conditions as provided other detainees in need of prescriptions for illnesses, subjected him to discrimination in violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

FOURTH CAUSE OF ACTION

Negligence

76. The actions of defendants during Mr. Bargher's incarceration beginning in January 2009 were negligent on one or more of the following particulars:

- a. In failing to arrange for Mr. Bargher to be examined and treated by mental healthcare staff;
- b. In failing to provide Mr. Bargher with necessary and appropriate medication in order to alleviate or minimize symptoms related to his mental illness;
- c. In failing to implement adequate procedures to ensure that Mr. Bargher was protected from physical harm or, if harmed, that he was treated in a timely and adequate manner.

FIFTH CAUSE OF ACTION

Intentional Infliction of Emotional Distress

(As to Defendants Sweeney, Goldsby and Jackson)

77. Defendants intentionally inflicted severe mental distress on Mr. Bargher by intentional, severe and outrageous conduct:

- a. Intentionally refusing him any medical or mental healthcare for nearly two years;
- b. Intentionally refusing him access to any service or program offered to all other inmates, including access to communication;
- c. Intentionally refusing him prescribed psychotropic medication both before and after he appeared for trial;
- d. Intentionally assigning inmates known to be dangerous to share Mr. Bargher's cell when he was in the general population;
- e. Intentionally holding Mr. Bargher in a "Holding Cell" for 24 hours per day, for thirteen months;

78. As a direct result of the actions and inactions of defendants, Mr. Bargher endured and suffered severe physical and emotional distress.

SIXTH CAUSE OF ACTION

Negligent Infliction of Emotional Distress

79. Defendants negligently inflicted severe mental distress on Mr. Bargher by conduct directed towards him that they knew had an especial likelihood of causing genuine and serious mental distress as follows:

- a. Failing to provide medical or mental healthcare for nearly two years;
- b. Failing to provide access to any service or program offered to all

other inmates, including access to communication;

c. Failing to provide prescribed psychotropic medication both before and after he appeared for trial;

d. Assigning inmates known to be dangerous to share Mr. Bargher's cell when he was in the general population;

e. Holding Mr. Bargher in a "Holding Cell" for 24 hours per day, for thirteen months.

SEVENTH CAUSE OF ACTION

Respondeat Superior

80. Sheriff Daniel Edwards, as the employer of Sweeney and Goldsby is liable for the actions and inactions under the principle of Respondeat Superior.

81. Sheriff Daniel Edwards could have prevented the negligent acts of Sweeney and Goldsby but failed to do so.

82. Defendant Goldsby was the supervisor of Defendant Sean Sweeney.

83. Goldsby could have prevented the injuries suffered by Mr. Bargher but failed to do so.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered in his favor and against Defendants, and that he be awarded the following relief:

A. Compensatory and nominal damages;

B. Punitive damages as to those defendants sued in their individual capacities;

C. A declaratory judgment, pursuant to 28 U.S.C. §§2201 and 2202, that Defendants violated his rights under the Eighth Amendment to the United States

Constitution and 42 U.S.C. §1983, the Americans with Disabilities Act, 42 U.S.C. 12101 et. Seq., Section 504 of the Rehabilitation Act, 29 U.S.C. §794 as well as state tort claims alleged herein while incarcerated at the Tangipahoa Parish Jail (TPJ) from January 14, 2009 to December 22, 2011;

D. Costs and reasonable attorneys' fees incurred in the prosecution of this action;

E. Other such relief as the Court may deem just and proper.

Respectfully submitted the 22nd day of October, 2012.

Dennis Bargher, Jr.

By and through his attorneys:

/s/ Justin Harrison
Justin P. Harrison, Bar No. 33575
Senior Staff Attorney

ACLU Foundation of Louisiana
P.O. Box 56157
New Orleans, Louisiana 70156
Telephone: (504) 522-0628
Facsimile: (888) 534-2996

/s/ Ron Wilson
Ron Wilson, Bar No. 13575

Law Office of Ron Wilson, T.A.
701 Poydras St. Ste 4100
New Orleans, LA 70139
Telephone: (504) 525-4361
Facsimile: (504) 525-4380
Email: cabral2@aol.com

/s/ Miranda Tait
Miranda Tait, Bar No. 28898

Advocacy Center
600 Jefferson Street, Suite 812
Lafayette, La 70501
Telephone: (337) 237-7380
Facsimile: (337) 237-0486
E-Mail: mtait@Advocacyla.org

/s/ Ronald Lospennato
Ronald K. Lospennato, Bar No. 32191

Advocacy Center
8325 Oak Street
New Orleans, La 70118
Telephone: (504) 208-4679
Facsimile: (504) 335-2890
E-mail: rlospennato@advocacyla.org

