

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA  
NORTHERN DIVISION

LORI BRANDNER,

Plaintiff,

vs.

WALWORTH COUNTY, SOUTH DAKOTA,

and

JOSHUA BOLL, MARISSA MICKELSON,  
KYLIE FRANKLIN, JEREMY JOHNSON, and  
DEFENDANT DOES 1-9, all in their individual and  
official capacities.

Defendants.

18-cv-1005

**COMPLAINT WITH REQUEST FOR  
TRIAL BY JURY**

COMES NOW Plaintiff Lori Brandner and for her Complaint against the above-named Defendants, states and alleges the following claims:

**INTRODUCTION**

1. Plaintiff Lori Brandner, as an inmate who had been held in custody in the Walworth County jail while she was awaiting sentencing, brings this action for damages pursuant to 42 U.S.C. § 1983, the Eighth and Fourteenth Amendments to the United States Constitution and under the law of the State of South Dakota against Joshua Boll, Marissa Mickelson, Kylie Franklin, Jeremy Johnson and Defendant Does 1-9, all supervisors or employees of Walworth County Jail, in their individual and official capacities, and against Walworth County, South Dakota.

2. Brandner alleges that Defendants Boll, Mickelson, Franklin, Johnson and Defendant Does 1-9, all Walworth County jail supervisors or staff, exhibited a deliberate indifference to her serious medical needs by denying and delaying needed medical care while she was in the custody and control of the Walworth County jail. She further alleges that these constitutional violations were committed as a result of the policies and customs of Walworth County, including policies and customs driven by Walworth County's monetary and non-medical concerns, and that Walworth County is liable under the theory of respondeat superior for the actions and inactions of Defendants Boll, Mickelson, Franklin, Johnson and Defendant Does 1-9.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over this action under 42 U.S.C. § 1983 pursuant to 28 U.S.C.A. §§ 1331 and 1343.

4. Plaintiff's cause of action arose in Walworth County, South Dakota. Venue in this Court is proper under 28 U.S.C.A. § 1391(b).

### **THE PARTIES**

5. At all times relevant to the claims asserted in this Complaint, Plaintiff Lori Brandner ("Brandner") was an adult resident of Campbell County, South Dakota who was in the custody of the Walworth County jail after a conviction for charges related to a second degree arson of her own insured property.

6. Walworth County is a duly incorporated county in the State of South Dakota that is subject to the Constitution and the laws of the United States and the Constitution and laws of the State of South Dakota.

7. Walworth County contracts with and is paid by Campbell County, as well as other counties, to provide custodial care for adults who are committed to custody through judicial order.

8. The Walworth County jail is administered and overseen by the following Walworth County Commissioners: Kevin Holgard, Jim Houck, Duane Martin, Scott Schilling and David Siemon.

9. Walworth County is responsible for the operation of the Walworth County jail, including providing for the safety, health care and serious medical needs of its inmates; the hiring, qualifications, supervision and training of its staff; the development and approval of policies and procedures so that inmates are not subject to excessive risk to their health or safety while in custody; and administrating the jail facility in compliance with federal and state safety laws and regulations to assure that inmates are not subject to excessive risk to their health or safety while in custody.

10. At all times relevant to the claims asserted in this Complaint, Joshua Boll was the sheriff of Walworth County into whose custody Plaintiff was placed. Boll is responsible to oversee and administer the daily operations of the Walworth County jail, including providing for the safety and serious medical needs of its inmates; supervising its staff; and enforcing the County's policies and procedures so that inmates are not subject to excessive risk to their health or safety while in custody.

11. At all times relevant to the claims asserted in this Complaint and to the best of Plaintiff's knowledge, Kylee Franklin ("Franklin") was a supervisor at the Walworth County jail into whose custody Plaintiff was placed. As a supervisor at Walworth County jail, Franklin was

responsible to supervise and address Plaintiff's safety, health care and serious medical needs. Franklin is no longer employed by Walworth County.

12. At all times relevant to the claims asserted in this Complaint and to the best of Plaintiff's knowledge, Marissa Mickelson ("Mickelson") was an uncertified correctional officer at the Walworth County jail who was responsible to supervise and address Plaintiff's safety, health care and serious medical needs.

13. At all times relevant to the claims asserted in this Complaint and to the best of Plaintiff's knowledge, Jeremy Johnson ("Johnson") was an uncertified correctional officer at the Walworth County jail who was responsible to supervise and address Plaintiff's safety, health care and serious medical needs.

14. At all times relevant to the claims asserted in this Complaint, Defendant Does 1-9 were correctional officers and staff members at the Walworth County jail who were responsible to supervise and address Plaintiff's safety, health care and serious medical needs.

#### **GENERAL ALLEGATIONS**

15. On or about February 6, 2016, Plaintiff Brandner was delivered to the custody of the Walworth County jail while she was awaiting the resolution of post-trial motions related to her criminal conviction in Campbell County.

16. Brandner had a documented medical history of serious medical needs, including medical diagnoses and ongoing treatment that required prescription medications and regular medical monitoring as a result of Brandner's chronic coagulopathy and history of cerebral vascular accidents ("CVAs"), right eye blindness, anxiety and depression.

17. Brandner was delivered from custody by Campbell County to the Walworth County jail with her existing prescription medications, including prescription eye drops and prescription

anticoagulation medication that allowed her to maintain her coagulation level (INR) in a therapeutic range that would prevent CVA, stroke and other serious medical conditions.

18. Defendant Mickelson was the correctional officer who completed Brandner's intake processing at the Walworth County jail.

19. A law enforcement officer from Campbell County delivered Brandner's prescription medications to Mickelson at the Walworth County jail when Walworth County assumed custody of Brandner.

20. During the intake process, Brandner informed Mickelson that she required prescription medication and medical monitoring due to her medical history, which she explained included a history of stroke and a risk of blindness.

21. Brandner explained her prescription medication schedule to Mickelson during the intake processing. When Brandner stated that she had a prescription for Coumadin, a blood thinner, took it on a particular schedule and needed to regularly have her blood drawn to test her coagulation level, Mickelson responded that her mother was a nurse so Mickelson knew about the medication that Brandner was taking.

22. Brandner provided Mickelson with the names of her treating physicians, including an eye specialist that Brandner was scheduled to see for her deteriorating left eye vision, in order that Walworth County could document and verify her serious medical needs and her prescription and treatment schedule.

23. While in custody, Brandner explained her medical history of stroke and her medical issues regarding her left eye to Defendants Franklin, Defendant Johnson and Defendant Does 1-9.

24. Between February 6, 2016 and March 13, 2016, Mickelson, Johnson, Franklin and Does 1-9 often dispensed Brandner's prescription medications on a schedule based on Walworth County's convenience rather than her physicians' prescriptions.

25. Between February 6, 2016 and March 13, 2016, to the best of Brandner's information, Mickelson, Johnson, Franklin and Does 1-9 failed to accurately monitor, chart or record Brandner's prescription medication usage.

26. On or about February 22, 2016, Johnson told Brandner that she had used up all of the prescription anticoagulant that she brought to the Walworth County jail. Walworth County failed to get her prescription refilled.

27. Johnson instructed Brandner to call her husband to get her prescription refilled.

28. As a result of its failure to monitor and fill her prescription, Walworth County failed to provide Brandner with her prescriptive anticoagulant medication for several days.

29. When Brandner complained to Johnson, who was dispensing her medications, that she was not getting her scheduled medication dosages, Johnson told Brandner that there was nothing he could do about it.

30. When Brandner's husband filled and delivered her anticoagulant medication to the Walworth County jail, he had an argument with Johnson during which Brandner's spouse angrily stressed Brandner's serious medical needs relative to her prescription medications and adequate medical monitoring.

31. On or about February 26, 2016, Brandner requested medical assessment for her left eye condition. She was informed by Walworth County jail staff that they would ask the States Attorney to see if Brandner could attend a scheduled medical appointment with a specialist for her eye condition.

32. Johnson and Franklin denied the treatment and informed Brandner that Walworth County would not transport her to Rapid City to see her physician because of the expense of driving her there.

33. Brandner ultimately obtained a medical furlough to attend her eye appointment because of her serious medical need for evaluation and treatment.

34. Brandner told Johnson, Franklin and Mickelson that she needed a blood draw every 2 weeks to monitor her blood coagulation levels. Walworth County ignored Brandner's request for medical evaluation.

35. In late February 2016, Brandner began to complain of headaches and again requested to have her blood drawn to check for her blood coagulation levels.

36. Walworth County and its jail staff continued to delay in seeking this medical evaluation for Brandner for a month.

37. On or about February 26, 2016, Walworth County finally arranged for Brander's blood coagulation levels to be medically evaluated.

38. Walworth County took Brander to the Avera Clinic in Selby, South Dakota.

39. Brandner provided the medical staff at the Avera Medical Group in Selby with her medical history and also provided the names of her treating physicians so that her medical needs could be verified.

40. When Brandner explained her medical history, her symptoms and her requests to have the Walworth County jail arrange for a blood test every 2 weeks, an Avera staff member said, "Let me guess. You've been there for a month without a blood test."

41. On or about March 6, 2016, Brandner's INR level was again assessed by the Avera Medical Clinic Selby. Her INR level was assessed as being therapeutically low.

42. On March 6, 2016, Brandner's spouse was concerned about Walworth County's failure to provide for Brandner's serious medical needs and he called and reported his concerns to the Campbell County sheriff.

43. On or about March 9, 2016, Brandner's spouse mailed written complaints to the Campbell County States Attorney and Campbell County sheriff to report the inadequate medical care that Walworth County was providing to Brandner while she was in custody, specifically and asserting her Eighth Amendment rights to adequate medical care.

44. Between March 10 and March 13, 2016, Brandner repeatedly complained to Franklin, Johnson and Does 1-9 that she had an increasingly painful headache.

45. On March 13, 2016, Brandner was having such a severe headache and numbness on her left side that she was crying with pain. She told Johnson that she thought her head was going to blow up and requested medical evaluation. Johnson advised her that all he was allowed to dispense to her was her prescription eye drops.

46. During the course of the day on March 13, 2016, Brandner's headache and symptoms of numbness continued to increase. Brandner lost sensation in her foot and ankle. Brandner was unable to leave her cell and told Defendant Doe that her head hurt and she was unable to move.

47. Other inmates who observed Brandner could see that she had a need for medical evaluation and began pleading with Walworth County jail staff, including Franklin who was supervising that day, to get medical help or call an ambulance for Brandner.

48. Franklin and other Defendant Does delayed in investigating Brandner's and other inmates' requests that Brandner be medically evaluated.

49. On March 13, 2016 in the later afternoon, Brandner called her spouse to report that she thought she was having a stroke and that the Walworth County jail staff were ignoring her requests for medical attention. Brandner's spouse then called the Campbell County sheriff and the Walworth County jail to request that an ambulance be called. The Campbell County sheriff represented to Brandner's spouse that he would contact the Walworth County jail about Brandner's condition as well.

50. On March 13, 2016. Brandner's spouse also called Brandner's attorney, who also called the Walworth County jail on March 13 to request that Brandner be medically assessed because of her spouse's concerns.

51. After Brandner's spouse and attorney called the Walworth County jail, Franklin and a Defendant Doe went to the doorway of Brandner's cell. Instead of attempting to evaluate Brandner's medical condition, Franklin hollered at Brandner, said that the sheriff would be called and told Brandner to "knock it off."

52. Brandner told Franklin and the Defendant Doe that she thought she was having a stroke. Franklin accused Brandner of faking illness.

53. Franklin and Defendant Doe applied a blood pressure cuff and took Brandner's blood pressure. When they discovered that Brandner's blood pressure was elevated, Franklin asserted that Brandner was "making it go up" herself.

54. Even though they had witnessed Brandner seizing and knew about her elevated blood pressure and history of stroke, Franklin and Defendant Doe left Brandner unattended in her cell.

55. Brandner continued having the symptoms of stroke while left unattended and suffered extreme anxiety out of fear that she might be left to die in the jail cell.

56. By the time that Walworth County jail staff called for an ambulance, Brandner was unable to use her left arm and leg.

57. Franklin and Defendant Doe had to carry Brandner down a flight of stairs to get to the ambulance because Brandner's left arm and leg were not functional and Brandner was experiencing seizing activity in her limbs. While transporting her to the ambulance, Franklin continued to holler at Brandner, telling her to "Stand up and walk right!" and to quit making it so hard for Franklin and Defendant Doe to get her to the ambulance.

58. When Brandner was finally medically evaluated on March 13, 2013, she had suffered a non-hemorrhagic cerebral vascular accident (CVA).

59. Brandner experienced significant pain, anxiety and disability as a result of the CVA she suffered while in Walworth County's custody.

60. Brandner required extended hospitalization as a result of the County's failure and delays in providing her adequate medical care.

61. On or about April 2, 2016, Brandner was returned to the custody of Walworth County with additional prescription pain medication and a medical order for rehabilitative physical therapy exercises.

62. To the best of Plaintiff's knowledge, the Walworth County Commissioners, Boll and all Walworth County jail staff were aware that Brandner had suffered a CVA and was unable to have full use of her left arm and leg when she was returned to custody at Walworth County jail after her hospitalization.

63. Despite its knowledge of Brandner's compromised health conditions and medically prescribed treatments, Walworth County and Walworth County jail staff continued to delay and

deny Brandner her prescription medications and the physical therapy and strengthening exercises prescribed by her physicians.

64. Because of her limited left arm and left leg mobility resulting from the March 13, 2016 CVA, Brandner struggled to complete her prescribed exercises on her own. An inmate who was a certified nurse assistant attempted to assist her when Walworth County jail staff ignored her physical therapy orders.

65. Franklin intentionally delayed Brandner's requests for her prescription pain medication. She also stated that Brandner was walking well enough that Brandner no longer needed her cane, so she took it from Brandner, and thereby further limited Brandner's physical activity.

66. On or about April 6, 2016, Brandner's spouse again called the Campbell County States Attorney to report that Brandner was not receiving her prescribed medical treatments.

67. Walworth County retaliated against Brandner for reporting its failures and delays in providing medical care by requiring her to be transported to her medical appointments in chains and shackles (but without a seat belt) and a Defendant Doe suggested that Brandner needed to remain handcuffed while Brandner's physician drew her blood for coagulation level testing.

68. Johnson advised Brandner that she would no longer be allowed contact with the "outside world" because she had "caused problems," and Walworth County jail staff denied Brandner and her spouse visitation and denied Brandner access to the jail commissary in retaliation for their complaints that her serious medical needs were being ignored by Walworth County and its jail staff.

69. On or about April 19, 2016, Brandner was granted a new trial and she was released from custody.

**COUNT ONE**  
**CIVIL RIGHTS VIOLATION OF 42 U.S.C. § 1983**  
**By Defendants Boll, Mickelson, Franklin, Johnson and Does 1-9**

70. Plaintiff re-alleges and incorporates by reference ¶¶ 1-69 above.

71. At all times during Brandner's incarceration in Walworth County's jail, the above-named Defendants had a duty under the 8<sup>th</sup> Amendment and the 14<sup>th</sup> Amendment to the United States Constitution to provide Plaintiff with reasonable and proper medical care and to prevent avoidable pain and medical injury to her.

72. The Defendants were at all times relevant acting under the color of law and under the color of authority as correctional officers, employees, agents and servants of Walworth County.

73. Brandner had serious medical needs that were known or obvious to the Defendants and had a right to prompt and adequate medical care for her medical conditions.

74. Defendants' actions, failures and delays amounted to a deliberate indifference for Brandner's serious medical needs and constitute a violation of Brandner's civil rights under the 8<sup>th</sup> and 14<sup>th</sup> Amendments.

75. The Defendants violated clearly established and well settled constitutional rights of the Plaintiff in denying and delaying her medical care.

76. As a direct and proximate result of the Defendants' actions, failures and delays, Brandner suffered the following injuries and damages:

- a. Violation of her constitutional rights to be have the level healthcare required for inmates under the 8<sup>th</sup> Amendment of the United States Constitution;
- b. Permanent physical and emotional damage;
- c. Lost vocational ability;
- d. Loss of enjoyment of life;
- e. Severe pain, fear and anxiety; and

f. Ongoing medical needs and expenses.

77. Plaintiff claims damages under 42 U.S.C. § 1983 for the injuries and losses set forth above.

**COUNT TWO**  
**CIVIL RIGHTS VIOLATION OF 42 U.S.C. § 1983**  
**By Defendant Walworth County, South Dakota**

78. Plaintiff re-alleges and incorporates by reference ¶¶ 1-77 above.

79. Prior to March 13, 2016, Walworth County developed and maintained policies and customs that exhibited deliberate indifference to the constitutional rights of persons in custody in their jail facility, which caused a violation of Brandner's rights.

80. It was and continues to be the policy and custom of the Walworth County Commission to fail to exercise reasonable care in training its jail staff, including Mickelson, Franklin, Johnson and Does 1-9, thereby failing to adequately prevent constitutional violations of Brandner's rights by its correctional employees.

81. It was and continues to be the policy and custom of the Walworth County Commission to fail to exercise reasonable care in supervising its jail staff, including Mickelson, Franklin, Johnson and Defendant Does 1-9, thereby failing to adequately prevent and discourage further constitutional violations of Brandner's rights by its correctional employees.

82. Walworth County relies in part upon a lack of resources to justify its violations of Brandner's and other inmates' constitutionally protected rights even though it is established law that this is not a reason that can be used to justify violations of the 8<sup>th</sup> Amendment.

83. As a result of the above-described policies and customs, Walworth County jail staff, including Mickelson, Franklin, Johnson, and Defendants Does 1-9, believed that their actions

would not be properly monitored by supervisory officers and that misconduct and constitutional violations would not be investigated or seriously addressed and would instead be tolerated.

84. The above-described policies and customs demonstrate a deliberate indifference on the part of Walworth County to Brandner's constitutional rights, and were the cause of the violations to Brandner's rights alleged herein.

85. As a direct and proximate result of the Defendant County's policies and customs, Brandner suffered the following injuries and damages:

- a. Violation of her constitutional rights to be have the minimal healthcare required for inmates under the 8<sup>th</sup> Amendment of the United States Constitution;
- b. Permanent physical and emotional damage;
- c. Lost vocational ability;
- d. Loss of enjoyment of life;
- e. Severe pain, fear and anxiety; and
- f. Ongoing medical needs and expenses.

86. Plaintiff claims damages under 42 U.S.C. § 1983 for the injuries and losses set forth above.

**WHEREFORE, PLAINTIFF LORI BRANDNER PRAYS FOR THE FOLLOWING RELIEF:**

1. For judgment in favor of Plaintiff declaring that the acts and omissions of the Defendants were unconstitutional and a violation of the Plaintiff's rights under the 8<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution and Article VI, § 23 of the Constitution of the State of South Dakota;

2. For judgment in favor of Plaintiff and against the Defendants, jointly and severally, in a monetary amount to be proven at trial to compensate the Plaintiff for Defendants' violation of her federal and state constitutional rights, and the damages that she has suffered as a result;
3. For Plaintiff's costs and disbursements as allowed by law, including reasonable attorney fees pursuant to 42 U.S.C.A. § 1983; and
4. For such other relief as deemed just and equitable by the Court.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury upon these claims pursuant to F.R.C.P. 38(a).

Dated this 8<sup>th</sup> day of March, 2018.

JOHNSON, POCHOP & BARTLING

  
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