
Eighth Amendment Does Not Provide for Vicarious Liability of Detention Manager

A case discusses management liability in a Section 1983 civil rights case alleging excessive force. *Serna v. Colorado Department of Corrections, et al.* (Tenth Circuit 2006). The Eighth Amendment provides that a prisoner has a right to be free from unreasonable and excessive force. In that opinion, the Tenth Circuit reviewed the proof necessary for a plaintiff to withstand a motion for summary judgment.

When a report of a potential armed prisoner came in, the Defendant Gasko, the Director of Prisons for Colorado, authorized a SWAT team to remove the suspect from the cell. During the removal, the other inmate in the cell was injured and he sued for damages.

The issue before the Tenth Circuit was whether the plaintiff met and showed facts sufficient to survive the legal qualified immunity claim and establish the right to a trial. Plaintiff *Serna* had to show that Director Gasko might have violated clearly established law. Proof of those specific factors, even if disputed by the DOC, would allow the case to go forward. Supervisors are only liable under Section 1983 for their own culpable involvement in the violation of a person's constitutional rights. The plaintiff must establish by facts that the supervisor acted knowingly or with "deliberate indifference" that a constitutional violation would occur.

The key question in an excessive force claim is whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.

The plaintiff must show: (1) there was "active

participation or acquiescence in the constitutional violation" or (2) the method of meeting the plaintiff's burden of proof might be to show that the supervisor acquiesced in the constitutional violation: by showing a duty to supervise and a failure to supervise that would be "deliberate indifference".

In the facts presented by the Plaintiff after initial discovery, Gasko was shown to have authorized the SWAT pullout according to a constitutionally valid procedure and to have received phone updates that did not include information regarding any of the cellmate's injuries or claims regarding failure to treat his injuries. The evidence showed that as far as Gasko knew, the procedure was carried out correctly. In order to prevail on the request for a trial, the Plaintiff needed to establish "disputed facts from which a jury could infer that Gasko was aware of a substantial risk of serious harm arising from the activation of the SORT Team." The evidence was insufficient as to Director Gasko.

What This Means For Counties

Detention command should be cautious about considering their own liability in detention scenarios. For shift supervisors or other local supervisors who may have more detailed knowledge of facility or operational practices, a claim of deliberate indifference can be more difficult to avoid, even where there is no direct participation in specific detention activities.

For more information, contact CTSI at 303-861-0507.