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NEWS

INMATE IMPLICATES PRISON GUARDS WITH EIGHTH AMENDMENT VIOLATION

By Anne Leinfelder

Two inmates get into a brawl. One prisoner beats up his cellmate. This may not sound unusual considering prison environments and the tendencies of some inmates. When guards stand by and watch, however, or set up a situation where an inmate is likely to be attacked, the situation looks suspicious.

Two recent cases in the Seventh Circuit Court of Appeals have dealt with inmates suing prison officials or personnel, implicating the Eighth Amendment's prohibition against cruel and unusual punishment. The issue revolves around the officials' awareness of the risk of danger and their actions with regard to that knowledge.

In *Case v. Ahitow*, the Seventh Circuit held that plaintiff Bryan Case had stated a cause of action under the Eighth Amendment and reversed the ruling of the lower court which had granted a motion for summary judgment in favor of the defendants. *Case v. Ahitow*, 301 F.3d 605 (Ill. App. Ct. 2002).

Case, an inmate at the Illinois River Correctional Center, sued prison personnel claiming that they purposely allowed a violent inmate, Phillip Jones, to be unsupervised near him. Case had previously written a letter to the head of the prison system stating that Jones had threatened to rape him and other letters to prison staff indicating that Case was being harassed. Jones had a violent record including armed violence, forcible detention and the assault of inmates on six prior occasions.

At the time of the incident, Case had just been moved from segregation to a unit where inmates could interact. Jones was working unsupervised in the area when Case walked by, and Jones attacked Case with a broom so violently that Case suffered a permanent loss of hearing.

Case filed this federal civil rights suit against prison officials alleging that the guards were out to "get him" because he was a troublemaker and because of his agreement to testify against a guard in a drug case. He believed they set up a situation where Jones would be unsupervised and if given access to Case, would follow through on his numerous threats to harm him.

The Court held that an issue of fact existed as to whether the behavior of the corrections personnel was "deliberately indifferent." The Court stated the test for this determination as follows: "If the guards know that the plaintiff inmate faces serious danger to his safety and they could avert the danger easily yet they failed to do so," they will be liable for deliberate indifference in violation of the Eighth Amendment. *Case*, 301 F. 3d at 607.

The defense pointed out that prisons are dangerous places and inmates fight often, while at the same time stating that none of the defendants was aware of there ever being a fight in the special management unit. The Court found this proposition hard to believe. Judge Posner wrote for a three-member panel of the Seventh Circuit, "Prisons are dangerous but Case was not a victim of the inherent, as it were the baseline, dangerousness of prison life, but, if his story is true, either of a plot by the guards to punish him or a failure of protection so egregious as to bring the case within the rare category of meritorious Eighth Amendment claims by prisoners." Case, 301 F.3d at 607.

"If the guards know that the plaintiff inmate faces serious danger to his safety and they could avert the danger easily yet they failed to do so," they will be ... in violation of Eighth Amendment.

—*Case v. Ahitow*, 301 F.3d 605 (Ill. App. Ct. 2002)

In a similar case where a prisoner was attacked by his cellmate, the Court of Appeals again dealt with this issue of deliberate indifference. *Washington v. LaPorte County Sheriff's Dept.*, 2002 WL 31236311. In the Washington case, the plaintiff inmate had not informed guards that he had

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