



ROLL CALL REPORTER

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When a Police Officer is Liable for Being a “Bystander”

QUESTION: Does a police officer have a duty to uphold the law and protect the public from illegal acts, even if such acts are committed by another police officer?

ANSWER: Yes. A police officer may violate federal civil rights law (42 U.S.C. §1983) if the officer knows that a fellow officer is violating an individual's constitutional rights; had a reasonable opportunity to prevent the harm; and failed to act.

CASE: *Marques L. Stevenson v. City of Seat Pleasant, Maryland, et al.*
United States Court of Appeals (Fourth Circuit), Decided February 21, 2014

Every officer knows that he or she may be liable for violating another's federal civil rights. For example, under the United States Constitution, officers may not effect arrests in violation of the Fourth Amendment, including using excessive force during the course of an arrest. But can an officer be sued under the same Constitution for failing to stop *another officer* from violating someone's constitutional rights? The short answer is yes. If an officer permits another officer to use excessive force during a detention or arrest, and makes no effort prevent it, both the officer who used the force and the officer who was a “bystander” to it, can face personal liability under federal law. What is needed to establish bystander liability is threefold: (1) an officer must know that a fellow officer is violating an individual's constitutional rights; (2) the officer must have a reasonable opportunity to prevent the violation; and (3) he or she chooses not to act to prevent the violation.

The facts of each particular case will determine whether bystander liability exists or not. What officers need to understand is that “bystander liability” is clearly established in the Fourth Circuit, the federal appellate circuit encompassing Maryland. It has been clearly established for well over a dozen years. The case reference above just reinforces this fact. Bystander liability is usually applied in the excessive force context, but it may be applicable to other Fourth Amendment violations. In essence, an officer who is present at the scene and does not take reasonable measures to protect a suspect from another officer's use of excessive force may be liable under federal law. The concept of bystander liability is premised on a law officer's duty to uphold the law and protect the public from illegal acts, regardless of who commits them. Although the circumstances are limited, there are circumstances in which bystanders are required to act.

The focus of bystander liability is whether the officer has a reasonable opportunity to realize the excessive nature of the force and to intervene and stop it. In other words, did the bystander officer, by choosing to do nothing, go along with the constitutional violation? It is also important to understand that mere presence at the scene of the alleged use of excessive force does not automatically give rise to bystander liability. To be liable, the officer must have a reasonable opportunity to realize the excessive nature of the force and a realistic opportunity to stop it in order for the duty to intervene to arise. Making that determination involves consideration of both the duration of the alleged use of force and the location of the suspect relative to the allegedly bystander officers. Recordings from dashboard

cameras, body cameras, cell phones, surveillance cameras, may advance or diminish a plaintiff's claims of bystander liability.

NOTE: The critical questions in determining whether or not an officer is liable as a bystander include: Was the officer present at the initiation of the use-of force? How long was force applied? For how long was the officer involved with the suspect? Where was the officer located in relation to the suspect at the time force was being applied? Were there impediments, including the presence of other officers, blocking the officer's view of the use-of-force? Simply put, duration and location are the keys to determining bystander liability.

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