



## ***LGIT'S COMMANDER'S LOG*** **MARCH 2005**

**A CORRECTIONAL OFFICER WHO STANDS BY AS A PASSIVE OBSERVER AND TAKES NO ACTION WHATSOEVER TO INTERVENE DURING AN ASSAULT VIOLATES THE RIGHT OF THE INMATE BEING ASSAULTED**

**QUESTION: WHAT MUST AN INMATE SHOW TO ESTABLISH A CLAIM UNDER 42 U.S.C. § 1983 FOR A FAILURE TO PROTECT FROM VIOLENCE FROM OTHER INMATES?**

**ANSWER: THE INMATE MUST SHOW SERIOUS OR SIGNIFICANT PHYSICAL OR EMOTIONAL INJURY AND THAT THE PRISON OFFICIALS HAD A SUFFICIENTLY CULPABLE STATE OF MIND**

**CASE: *Troy Luke Burks v. John Pate, Acting Warden, et al.*  
United States Court of Appeals for the Fourth Circuit  
No. 04-6784 (Unpublished), Decided January 5, 2005**

**In a recent unpublished opinion, a panel of the United States Court of Appeals for the Fourth Circuit reviewed the elements of an inmate's claim under 42 U.S.C. § 1983 for a failure to protect from the violence of other inmates.**

**The facts established that while he was incarcerated at Allendale Correctional Institution in South Carolina, Troy Luke Burks was attacked by five inmates who entered his cell. According to Burks, he tried to block the inmates with an empty locker and banged the locker against the cell door to alert a Sergeant who was sitting down stairs less than 10 feet away. Burks alleged that the sergeant "disappeared" under the walkway because he was afraid to intervene out of fear of being injured and because he was alone. After the assault, Burks located the sergeant and requested medical attention. He was treated at a local emergency room and released. Burks's medical records revealed that he had been stabbed in the face and upper left chest area with a twelve-inch shank, requiring multiple stitches in both areas. A disciplinary hearing followed, and Burks and another inmate were found guilty of fighting and Burks was placed in administrative segregation.**

**Burks then sued under § 1983, alleging that prison officials knew of a pervasive risk of harm to inmates and failed to institute measures to prevent the attack; and that the sergeant deliberately failed to do anything to stop the attack once it began. The federal district court granted summary judgment in favor of the acting warden and the unit sergeant.**

**In an unpublished opinion, which is not binding precedent, the United States Court of Appeals for the Fourth Circuit reversed the granting of summary judgment in favor of the sergeant, and remanded the claim against him to the federal district court for further proceedings. The court first observed that the Eighth Amendment imposes a duty on prison officials “to protect prisoners from violence at the hands of other prisoners.” And, an inmate could establish a claim under § 1983 for failure to protect if he could show a “serious or significant physical or emotional injury”, and that prison officials were deliberately indifferent to the inmate’s right to be free from violence. The court found sufficient evidence in the record not only of significant physical injury, but also to support Burks’s contention that the sergeant saw the altercation and did nothing to prevent or stop the attack. Although the sergeant disputed the assertion that he witnessed the attack, the court found that his evidence “created a genuine issue of material fact—whether or not [the sergeant] saw the attack and took no action—precluding summary judgment on this claim.”**

**NOTE: Correctional officers who are present when a violent altercation involving an armed inmate erupts and who fail to intervene immediately do not violate the Eighth Amendment if officers are unarmed, unaware of a risk of harm prior to the altercation, and take reasonable steps to intervene safely. It is the officer who stands by passively and takes no action to intervene during an assault who will be deemed to have violated the inmate’s rights under the Eighth or Fourteenth Amendments.**

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