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A PRISONER ALLEGING A VIOLATION OF HIS FEDERAL CONSTITUTIONAL RIGHT TO BE FREE FROM EXCESSIVE FORCE MUST PROVE MORE THAN *DE MINIMIS* INJURY

QUESTION: CAN A PRISONER ALLEGING A VIOLATION OF HIS FEDERAL CONSTITUTIONAL RIGHT TO BE FREE FROM EXCESSIVE FORCE PREVAIL IF HIS INJURY IS MERELY *DE MINIMIS* (MEANING "INSIGNIFICANT" OR "MINOR")?

ANSWER: NO. A PRISONER CANNOT PREVAIL ON AN EIGHTH OR FOURTEENTH AMENDMENT EXCESSIVE FORCE CLAIM IF HIS INJURY IS MERELY *DE MINIMIS.*

CASE: *Willis v. Youngblood,* -- F. Supp. 2d --, 2005 WL 2095724 (D. Maryland)
Decided August 31, 2005

In *Willis v. Youngblood*, Judge Richard Bennett of the United States District Court for the District of Maryland reaffirmed that a prisoner who brings a federal civil rights suit under 42 U.S.C. Section 1983, alleging that correctional officers violated his federal constitutional rights by using excessive force against him, cannot prevail if his injuries are only "*de minimis", i.e.*, "slight", "minor", or "insignificant".

In this case, the facts showed that Norman Willis, an inmate at the Western Correctional Institution, sued two correctional officers, Defendants Knight and Huff, alleging that they used excessive force against him. Specifically, Willis alleged that, on October 3, 2002, Officers Knight and Huff were escorting him to see another officer in connection with a complaint Willis had filed. Willis acknowledged in his testimony at trial that he "was resisting to go up there and Officer Knight kept pulling me." He testified that Officer Knight "grabbed me from the front, pushed me up against the wall; and hit my head up against the wall." Willis further testified that while he was "handcuffed from behind", the officers leaned him "over the rail as if they were going to throw me down the steps . . . and . . . let me go." In conclusion, Willis testified that "they just shoved me and pushed me up against the wall, hit my head against the wall, threw me in the chair while I was handcuffed then my wrists was bruised up."

There was no evidence submitted at trial of any physical injury to Willis. There were no medical records, nor any administrative reports indicating that Willis ever suffered a

scratch or a bruise as of result of the incident. While the officers did not specifically remember the events of October 3, 2002, they denied Willis's allegations. A jury found in favor of Willis, awarding him $1.00 in compensatory damages for his physical injuries, and $45,000 in punitive damages.

After the verdict, Officers Knight and Huff filed a motion asking the judge to find that the jury's verdict was contrary to the clear weight of the evidence presented at trial. They contended that Willis had proved nothing other than a *de minimis* injury as a result of the incident. Judge Bennett agreed and granted the officers' motion.

In doing so, Judge Bennett reviewed the legal principles applicable to a prisoner's claim of excessive force under the federal constitution. In the case of a sentenced prisoner, such claims are governed by the Eighth Amendment's prohibition against cruel and unusual punishment. In the case of a pretrial detainee, such claims are governed by the Fourteenth Amendment's guarantees of personal liberty and due process. Both amendments, however, have been construed by the United States Supreme Court to exclude from constitutional recognition *de minimis* uses of physical force. Thus, concerning prisoners' excessive force claims, the Supreme Court and federal courts of appeal have not interpreted the Eighth and Fourteenth Amendments to mean that "every malevolent touch by a prison guard gives rise to a federal cause of action", *Hudson v. McMillian,* 503 U.S. 1, 9-10 (1992). To the contrary, and as stated by one federal court, "[n]ot every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers, violates a prisoner's constitutional rights". *Johnson v. Glick,* 481 F.2d 1028, 1033 (2d Cir. 1973). The United States Court of Appeals for the Fourth Circuit, the court charged with interpreting federal law in Maryland, has said:

> **[p]unishment must mean something more than trifling injury or negligible force. Otherwise, every touch would be actionable and every alleged 'push or shove' would entitle plaintiff to a trial. This is no idle concern. Those in detention often detest those charged with supervising their confinement, and seek to even the score through the medium of a lawsuit. The Constitution, however, does not exist to scoop up every last speck of detainee discontent. To hold that every incident involving contact between an officer and a detainee creates a constitutional action, even in the absence of injury, trivializes the nation's fundamental document.**

***Riley v. Dorton*, 115 F.3d 1159, 1167 (4th Cir. 1997).**

Since Willis had failed to produce any evidence of injury to support his claim of excessive force, Judge Bennett overturned the jury's verdict and entered judgment in favor of the officers. He said, "[t]here was no evidence introduced at trial indicating any physical injury of any kind resulting from the events of October 3, 2002. There was no indication of a bruise, swelling or even the filing of a medical complaint." As such, Willis's claim failed as a matter of law.

NOTE: While an injury must be more than *de minimis* in order for the plaintiff to prevail, the injury need not be severe or permanent to be actionable under the Eighth or Fourteenth Amendment. An example of a "*de minimis*" injury is found in *Taylor v. McDuffie*, 155 F.3d 479 (4th Cir. 1998), wherein the Fourth Circuit noted that abrasions on the wrists and ankles, and "tenderness over some ribs", were *de minimis* injuries, and that the plaintiff did not seek medical treatment "for at least 12 hours after the incident." In light of these facts, the court concluded, "no reasonable jury could conclude that [plaintiff's] injuries were more than *de minimis*."

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