Department of Corrections Has No General Duty to Prevent Violence of Discharged Inmates

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Jails Do Not Have a General Duty to Prevent Former Inmates From Violent Acts After They Are Lawfully Released From Detention

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Binschus v. State, 380 P.3d 468 (Wash. 2016), considered whether a county jail has a duty to prevent inmates from violent acts after they have been released from detention. The plaintiffs contended that the jail could have prevented an inmate from committing several violent crimes after his release. The trial court granted summary judgment for the county. The Washington State Supreme Court upheld the summary judgment. "Jails have a responsibility to control violent inmates while they are incarcerated, but they do not have a general duty to prevent such inmates from committing crimes after they are lawfully released from incarceration" (*Binschus*, 470).

Facts of the Case

Facts outlined in the appellate court opinion (*Binschus v. State,* 345 P.3d 818 (Wash. Ct. App. 2015)) reveal that from April 4 to August 2, 2008, Isaac Zamora had been detained in local jails in Skagit and Okanagan counties for nonviolent crimes. In May 2008, he was sentenced to six months for malicious mischief and possession of a controlled substance. His detainment was to be followed by 12 months of supervision by the Department of Corrections and he was to undergo a mental health and substance use assessment and comply with any treatment recommendations. His mother had contacted the Skagit County jail and prosecutor reporting that Mr. Zamora had a diagnosis of bipolar disorder, that he had refused treatment, and that she and her husband feared him. He had limited contacts with mental health clinicians while in jail, and he refused mental health medications. He was transferred from the Skagit County Jail to the Okanogan County Jail without copies of his judgment or sentence.

In September 2008, Mr. Zamora shot and killed six people and injured several others in western Washington. There is evidence to suggest that Mr. Zamora experienced a psychotic episode at the time of the shootings, which followed intermittent refusals to participate in mental health care in the jail and community.

After the shootings, Fred Binschus, other surviving victims, and estate representatives (plaintiffs) filed a negligence suit against Okanagan and Skagit counties, Skagit Emergency Communication Center, and the Washington State Department of Corrections. The plaintiffs claimed that the counties knew, or should have known, of Mr. Zamora's mental state, but they failed to take appropriate measures to assess and treat his condition. Had the appropriate measures been followed, the plaintiffs' claim, the tragic events might have been prevented.

The counties moved for summary judgment, and the trial court granted summary judgment in favor of Skagit and Okanagan counties. The trial court ruled that the counties owed no general duty to the victims, and, if a duty existed, there was insufficient evidence of proximate causation for their injuries. The Court of Appeals of Washington reversed and remanded the case to Skagit County, stating that there were material questions of fact that precluded summary judgment. An appeal was taken to the state supreme court.

Ruling and Reasoning

The Washington Supreme Court affirmed the trial court's ruling. In general, people and institutions have no responsibility for preventing a person from harming a third person (*Petersen v. State*, 671 P.2d 230 (Wash.1983)), except in certain circumstances when a special relationship exists that imposes a responsibility to control the others' conduct.

Relying on Restatement of Torts § 319 (1965) and case precedent (*TaggartTaggart v. State*, 118 Wn.2d 195 (Wash. 1992)), the court stated that duty is "fundamentally about control," and the duty

is imposed only when there is a "definite, established and continuing relationship" (*Taggart*, p 219). In *Taggart*, the court held: "When a parolee's criminal history and progress during parole show that the parolee is likely to cause bodily harm to others if not controlled, the parole officer is under a duty to exercise reasonable care to control the parolee and prevent him or her from doing some harm" (*Taggart*, p 220).

The *Binschus* court declined to extend the *Taggart* precedent to impose a broader duty, stating that Skagit County had a duty only when it had a "take charge" relationship and was in a position to control Mr. Zamora. As the inmate had been appropriately and lawfully discharged from the physical custody of jail, Skagit County did not have a duty to prevent injuries sustained that are unrelated to its duty and ability to control Mr. Zamora. Unlike the decision in *Taggart,* where a dangerous individual continued to be under the control of the Department of Corrections, the Department had no "special relation" upon which to exert control over Mr. Zamora's conduct or adherence to treatment recommendations (*Binschus*, p 471).

The court stated that the implications of imposing a broad duty beyond physical custody of an inmate would be unreasonable. Citing U.S. Department of Justice statistics, the court noted that the recidivism rate for some types of offenses is nearly 50 percent, rendering it implausible to extend the duty beyond the definition of physical custody of the inmate. "[L]iability results from negligently failing to control, not failing to protect against all foreseeable dangers" (*Binschus*, p 579).

The court cautioned that their ruling was not to say that no jail could ever be liable for a former inmate's actions. As an example, the court described a situation where officers negligently allow an inmate to escape before release. In *Binschus*, however, the court found that Mr. Zamora committed the shootings after his lawful release and that the events were not a foreseeable consequence of any failure to control Mr. Zamora while he was detained. Finding no duty, the issue of proximate cause was not addressed.

Dissent

The dissenting opinion stated that limiting the analysis to physical custody or control of an inmate ignores the conjoining "reasonable precautions to prevent foreseeable violence" supported by case precedent in *Petersen v. State*, 100 Wn.2d 421, 426 (1983). In this case, stated the dissenting justice, continuity of care and appropriate documentation of mental health or medical services is within the scope of "reasonable precautions." There were indications in the *Binschus* case that mental health and medical treatments were not adequately provided or documented. According to the dissent, genuine questions of fact remain about reasonable precautions that the county could have made and the foreseeability of harm, which should preclude summary judgment for the county.

Discussion

This case addresses the circumstances under which correctional facilities and staff owe duties to protect individuals from harm by (former) inmates. The court focused heavily on the ability to exert physical control and prevent the actor from engaging in violent acts. The court ruled that correctional staff has no general duty to protect others when there is no take-charge relationship, either custodial or physical, such that the correctional staff can control the actions of the offender.

Of note, *Binschus* was decided two months before *Volk v. DeMeerleer*, 386 P.3d 254 (Wash. 2016), another Washington Supreme Court case. Instead of correctional staff, *Volk* addressed mental health clinicians' obligations to protect third parties from the dangerous propensities of their patients. In *Volk*, the patient (Jan DeMeerleer) murdered his fiancé and one of her sons, and subsequently committed suicide. Mr. DeMeerleer had a diagnosis of bipolar disorder and had received intermittent care from Dr. Howard Ashby for several years, with his last appointment occurring three months before the murders. Records reveal that Mr. DeMeerleer reported no thoughts of violence toward others at that appointment and disavowed intent to harm himself. Representatives of the surviving family later sued the physician and the clinic where Mr. DeMeerleer had been receiving care.

In *Volk*, the Washington Supreme Court ruled that outpatient mental health clinicians have a duty "to take reasonable precautions to protect anyone who might foreseeably be endangered by their patient's dangerous propensities" (*Volk*, p 270). Like *Binschus*, the court considered the degree of control held by an outpatient clinician over his patient. In *Volk*, however, the court said that once a special re-

lationship is established, there is a duty regardless of control. The dissent in *Volk* pointed out the contradiction in precedent (*Volk*, p 275).

With continuing legal ambiguity regarding the scope of mental health professionals' duty to prevent harm to others, mental health providers working in correctional settings should be aware of the implications of both *Binschus* and *Volk*. It is prudent for clinicians to perform routine and adequate assessments of inmates for thoughts of harming themselves or others, including during intake and before release. Reasonable measures can then be taken to minimize or target the inmate's future risk for violence while in physical custody, including offering psychiatric and psychological treatment when appropriate. The inmate's participation in care, or lack thereof, should be documented in an effort to preserve an account of the attempts to mitigate the inmate's risk for violence.

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Constitutionally Inadequate Treatment for Psychiatric Inmates

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Court Allows a Case to Proceed Against Jail Medical Personnel for Claim of Eighth Amendment Violation for Failure to Restart Psychiatric Medications

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In *Richmond v. Huq*, 872 F.3d 355 (6th Cir. 2017), the United States Court of Appeals for the Sixth Circuit considered whether summary judgment for the defendants was appropriate in a case alleging that the psychiatric care provided to the plaintiff in jail amounted to cruel and unusual punishment. The district court had granted summary judgment in favor of the defendants on the grounds that the plaintiff failed to show a violation of the constitution. On appeal, the Sixth Circuit Court of Appeals affirmed in part and reversed in part.

Facts of the Case

Plaintiff Melissa Richmond was arrested on December 25, 2012, in relation to an altercation at a family gathering in Wyandotte, Michigan. While in the police cruiser, she set her seatbelt on fire in an attempt to free herself, resulting in burn wounds. She was transported to a hospital and treated for first- and second-degree burns. After being discharged the next day, she was arraigned and placed in the custody of the jail.

On December 26, 2012, after her arraignment, Ms. Richmond was screened for medical and mental health histories by a member of the jail medical staff, who determined that follow-up medical and mental health evaluations would be necessary. Nurse Shevon Fowler examined Ms. Richmond, changed her wound dressing, referred her to a psychiatric social worker (PSW), and paged the on-call doctor, who ordered once-daily dressing changes and prescribed Lortab (an opioid) for pain. On December 28, Ms. Richmond was seen by Dr. Rubab Huq, who prescribed Motrin (for pain and inflammation) and antibiotics to prevent infection and scheduled a follow-up medical visit for January 10, 2013. On December 28, Ms. Richmond received mental health screening by Agron Myftari, PSW, who discussed Ms. Richmond's history of bipolar disorder and her then-current medications, which included Prozac and Xanax. After his screening, Mr. Myftari scheduled Ms. Richmond for a January 11, 2013, appointment with a psychiatrist. On January 7, Ms. Richmond saw Patricia Rucker, PSW, regarding the jail's failure to provide her psychiatric medication. Because Ms. Richmond stated that she had not yet been evaluated, Ms. Rucker sent her to the mental health unit for another screening. During this second mental health screening, a third PSW, Jim Gilfix, determined that Ms. Richmond was stable and could await her previously scheduled appointment without any psychiatric medication, even though he was aware that Ms. Richmond had been taking Prozac and Xanax before she was taken into custody.

On January 11, Dr. Lisa Hinchman, a psychiatrist, evaluated Ms. Richmond and diagnosed bipolar disorder, depression, and posttraumatic stress disorder and prescribed psychiatric medication.