

DICKINSON v. COCHRAN: ELEVENTH CIRCUIT PUTS QUALIFIED IMMUNITY ON THE ROPES IN CONSTITUTIONAL CHALLENGE TO JAIL CONDITIONS

Dale Turley*

In *Dickinson v. Cochran*,¹ the U.S. Court of Appeals for the Eleventh Circuit reviewed an inmate's § 1983 claims against jail officials after he was stabbed by another inmate.² *Dickinson* should ring alarm bells for the Alabama Department of Corrections and prison officials throughout the state, because the court brushed aside qualified immunity and laid out a roadmap that future inmates in similar situations can follow.³

In 2009, after a six-year investigation, the U.S. Department of Justice (the "DOJ") provided the Mobile County Metro Jail (the "jail") with a detailed list of their findings regarding the jail's conditions.⁴ These findings included jail officials' failures to (1) classify and separate inmates properly, (2) limit contraband from entering the jail, and (3) properly supervise the inmates.⁵ The DOJ's report noted that these failures greatly raised the risk of violence and serious injury to both inmates and the jail's staff.⁶ To support their position, the DOJ cited an increasing amount of violence between inmates, including eighty-nine reported fights in one four-month period.⁷ Additionally, the DOJ reported that "the jail 'conducted too few shakedowns' and, as a result, 'inmates possessed various shanks, razors, bleach, and other contraband.'"⁸

With regard to the jail's classification failures, the DOJ explained that a proper classification system is necessary to provide a "reasonably safe environment," because such a system attempts to predict inmate behavior to help jail officials employ the proper security measures to reduce the risk of violence.⁹ The DOJ's report also noted that the use of a proper classification system becomes even more vital when facilities are overcrowded.¹⁰ The DOJ found that the jail was "dangerously overcrowded" and, as a result of the jail

* Junior Editor, *Cumberland Law Review*; Candidate for Juris Doctor, May 2022, Cumberland School of Law; B.A. Business Management and Marketing, May 2008, University of Alabama at Birmingham.

¹ *Dickinson v. Cochran*, 833 F. App'x 268 (11th Cir. 2020).

² *Id.* at 269.

³ See generally *Dickinson*, 833 F. App'x 268.

⁴ *Id.* at 269.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* The opinion does not indicate how many unreported fights occurred.

⁸ *Id.*

⁹ *Dickinson*, 833 F. App'x at 269.

¹⁰ *Id.*

officials' failure to use a classification system, "the jail failed to separate adequately predatory inmates from vulnerable inmates."¹¹ The DOJ stated that these failings stemmed "from a lack of adequate policies, procedures, training, and staffing."¹² To correct these deficiencies, the DOJ made a number of recommendations, such as developing and implementing a proper classification system, providing sufficient staff and supervision, and developing and implementing policies to increase the frequency and narrow the scope of shakedowns.¹³

In January of 2018, Joshua Dickinson was arrested for misdemeanor harassment after an argument with his aunt.¹⁴ Two days later, officers put Joshua Brown, a previously convicted murderer, in a cell with Dickinson, who "had no prior criminal history."¹⁵ Prior to being placed in Dickinson's cell, Brown fought with both police officers and corrections officers inside the jail.¹⁶ Jail officials knew Brown was a "violent and difficult inmate" because he had previously spent time at the jail.¹⁷ Despite this knowledge, after finally restraining Brown, officials placed him into Dickinson's cell.¹⁸ As Dickinson was performing pushups against the wall, Brown hit him in the head, pulled out a knife, and repeatedly stabbed Dickinson, rendering him unconscious.¹⁹ Subsequently, Dickinson filed "deliberate-indifference" claims under 42 U.S.C. § 1983 against Sheriff Sam Cochran and Warden Noah Price "Trey" Oliver (the "defendants") for failing to protect him and failing to staff, train, and supervise jail officials.²⁰ Cochran and Oliver filed a motion to dismiss, alleging that they were protected under qualified immunity.²¹ The district court denied their motion, and they appealed.²²

Qualified immunity protects government officials in their individual capacity for conduct that arose during the exercise of discretionary functions "unless their conduct violates clearly established statutory or constitutional rights of which a reasonable person would have known."²³ Dickinson did not

¹¹ *Id.* The DOJ found that officials collected "behavior-based" information but did not utilize it for classification purposes. *Id.*

¹² *Id.* at 269–70.

¹³ *Id.* at 270.

¹⁴ *Dickinson*, 833 F. App'x at 270.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* (internal quotations omitted).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Dickinson*, 833 F. App'x at 269–70; 42 U.S.C. § 1983.

²¹ *Dickinson*, 833 F. App'x at 270–71.

²² *Id.* at 271.

²³ *Id.* (quoting *Caldwell v. Warden, FCI Talladega*, 748 F.3d 1090, 1099 (11th Cir. 2014)). Even when a plaintiff is awarded compensation from a government official in their individual

dispute that the defendants' discretionary duties included operating the jail; thus, it became Dickinson's burden to show that the defendants had "1) violated a constitutional right; and 2) that the right was clearly established at the time of the alleged violation."²⁴

While it is well-established that officials must protect prisoners from violence,²⁵ not all injuries sustained by an inmate lead to liability for the officials.²⁶ However, it is a constitutional violation for an official to act "deliberately indifferent to a substantial risk of serious harm to an inmate who suffers injury."²⁷ To prove that the defendants acted with deliberate indifference, Dickinson had to show that the defendants "(1) [had] subjective knowledge of a risk of serious harm; (2) disregard[ed] that risk; (3) by conduct that [was] more than gross negligence."²⁸ Additionally, because the defendants were supervisors, Dickinson had to establish that the defendants either "participated directly in the unconstitutional conduct" or that a causal connection existed between the defendants' actions and the conduct that violated Dickinson's rights.²⁹ This connection can be established "when a history of widespread abuse puts the responsible supervisor on notice of the need to correct the alleged deprivation, and he fails to do so"³⁰ In sum, to overcome the defendants' assertion of qualified immunity, Dickinson needed to prove that (1) a clearly established constitutional right was violated because (2) the defendants demonstrated deliberate indifference and (3) a causal link existed showing that defendants knew of a history of violence.³¹

In its analysis, the Eleventh Circuit stated that Dickinson sufficiently alleged a causal link by a showing that the defendants were aware of the history of extensive violence at the jail.³² While the court did not provide

capacity, almost all of those awards are paid by the government. *See* Lisa Soronen, *What Would Eliminating Qualified Immunity Mean for States and Local Governments?*, NCSL: THE NCSL BLOG (June 17, 2020), <https://www.ncsl.org/blog/2020/06/17/what-would-eliminating-qualified-immunity-mean-for-states-and-local-governments.aspx> [<https://perma.cc/7PBM-ZBKZ>].

²⁴ *Dickinson*, 833 F. App'x at 271 (citing *Caldwell*, 748 F.3d at 1099).

²⁵ *Id.* (citing *Harrison v. Culliver*, 746 F.3d 1288, 1298 (11th Cir. 2014)).

²⁶ *Id.* (citing *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)).

²⁷ *Id.* (quoting *Marbury v. Warden*, 936 F.3d 1227, 1233 (11th Cir. 2019)).

²⁸ *Id.* at 272 (quoting *Goodman v. Kimbrough*, 718 F.3d 1325, 1331–32 (11th Cir. 2013) (internal quotations omitted)).

²⁹ *Id.* (quoting *Harrison*, 746 F.3d at 1298). Supervisors cannot be held liable under § 1983 on the theories of respondeat superior or vicarious liability. *Dickinson*, 833 F. App'x at 272 (citing *Cottone v. Jenne*, 326 F.3d 1352, 1360 (11th Cir. 2003)). Also, *Dickinson* made no allegations that the defendants actively participated in the unconstitutional conduct. *Id.*

³⁰ *Id.* (quoting *Cottone*, 326 F.3d at 1360)). There are two other ways to establish a causal link, but *Dickinson* only relied on the mentioned method. *See id.*

³¹ *Id.* at 271–72.

³² *Id.* at 272.

specific details as to how Dickinson proved the defendants' knowledge, Dickinson's allegations of lack of a classification system, failure to limit contraband, and failure to properly supervise inmates all aligned with the DOJ's report in 2009 to Mobile County officials.³³ Next, the court relied on precedent to establish that the defendants acted with deliberate indifference and violated a clearly established constitutional right, such that it denied defendants the protection of qualified immunity.³⁴

In *Marsh v. Butler County*, the sheriff was notified by prisoner rights advocates that the jail's conditions were dangerous for inmates.³⁵ The conditions in *Marsh* were much like those in *Dickinson*, in that the jail was overcrowded and the sheriff failed to classify, separate, and properly supervise inmates.³⁶ Because the sheriff was on notice and did nothing to improve the jail's conditions, the court concluded that the sheriff acted with "deliberate indifference to the plaintiff's constitutional rights because 'it [was] an unreasonable response for an official to do nothing when confronted with prison conditions . . . that pose[d] a risk of serious physical harm to inmates.'"³⁷ Similarly, in *Hale v Tallapoosa County*, the court established that the sheriff at issue knew of frequent inmate violence and overcrowding yet failed to classify and separate inmates, properly train jail officials, or properly supervise the inmates.³⁸ Again, because the sheriff did nothing to improve the jail's conditions, the court held that there was sufficient evidence to find the sheriff acted with deliberate indifference.³⁹

The Eleventh Circuit noted that Dickinson, like the plaintiffs in *Marsh* and *Hale*, showed that there were problems with overcrowding, violence, lack of classification and separation of inmates, and contraband in the prison.⁴⁰ The court further stated that the defendants had "fair warning" that their failure to address the jail's conditions "violated a clearly established constitutional right."⁴¹ Based on *Marsh* and *Hale*, the court found that the defendants acted with deliberate indifference, violated Dickinson's clearly established constitutional right, and were not entitled to qualified immunity.⁴²

³³ *Dickinson*, 833 F. App'x at 269, 272.

³⁴ *Id.* at 272–75 (citing *Marsh v. Butler Cnty.*, 268 F.3d 1014 (11th Cir. 2001); *Hale v. Tallapoosa Cnty.*, 50 F.3d 1579 (11th Cir. 1995)).

³⁵ *Id.* at 273 (citing *Marsh*, 268 F.3d at 1025).

³⁶ *Id.* (citing *Marsh*, 268 F.3d at 1021–22, 1029).

³⁷ *Id.* (quoting *Marsh*, 268 F.3d at 1034).

³⁸ *Id.* (quoting *Hale*, 50 F.3d at 1583–85).

³⁹ *Dickinson*, 833 F. App'x at 274 (quoting *Hale*, 50 F.3d at 1584–85).

⁴⁰ *Id.* at 273.

⁴¹ *Id.* ("The 'salient question' is 'whether the state of the law' at the time of the official's conduct gave the official 'fair warning that their alleged treatment of [the plaintiff] was unconstitutional.'" (quoting *Hope v. Pelzer*, 536 U.S. 730, 741 (2002))).

⁴² *Id.* at 274–75.

In April 2019, following a three-year investigation, the DOJ put the State of Alabama and the Alabama Department of Corrections on notice that the Alabama men's prison system was in violation of the Constitution.⁴³ Several of the investigation's findings match the deficiencies found in *Marsh*, *Hale*, and *Dickinson*: overcrowding,⁴⁴ increased violence between inmates,⁴⁵ inadequate staffing,⁴⁶ and inadequate physical facilities.⁴⁷ Additionally, the State of Alabama and the Alabama Department of Corrections, like the defendants in *Marsh*, *Hale*, and *Dickinson*, have taken few steps to address the DOJ's findings.⁴⁸ The only substantive action taken by the State to address the DOJ's findings was to order construction of three new prisons.⁴⁹ However, construction on those prisons has not begun and is not expected to be completed until 2025.⁵⁰

Following the Eleventh Circuit's opinions in *Marsh*, *Hale*, and *Dickinson*, officials are on notice of the dangerous conditions within the Alabama prison system but are doing very little to remedy the problems. The court's reasoning in *Dickinson* emphasizes that the State of Alabama and its prison officials cannot always rely on qualified immunity for protection. How the State will and should handle future inmate assaults while awaiting completion of new prisons remains to be seen.

⁴³ Complaint at 1–2, *United States v. State of Alabama*, No. 20-CV-01971-JHE (N.D. Ala. Dec. 9, 2020), ECF No. 1.

⁴⁴ *Id.* at 8. As of September 2020, there were approximately 15,297 inmates in Alabama's prisons for men, which were designed for only 9,882 inmates. *Id.*

⁴⁵ *Id.* at 7–8. From September 2019 to June 2020, there were at least 825 incidents of assault between male inmates. *Id.* Additionally, at least ten male inmates were killed in Alabama prisons in 2018; at least fourteen male inmates were killed in 2019; and at least nine male inmates were killed from January through June 2020. *Id.* at 6–7.

⁴⁶ Complaint, *supra* note 43 at 8. Through the first quarter of 2020, the State of Alabama reported approximately 1,413 officers and 313 supervisors. *Id.* at 8–9. However, this was only approximately 43% of the authorized 3,326 officers. *Id.* at 8.

⁴⁷ *Id.* at 2.

⁴⁸ *Id.* at 2, 19–20.

⁴⁹ Press Release, Off. of the Governor, Governor Ivey Announces Next Phase of Alabama Prison Program (Sept. 3, 2020), <https://governor.alabama.gov/newsroom/2020/09/governor-ivey-announces-next-phase-of-alabama-prison-program/> [<https://perma.cc/H7YU-3SVF>].

⁵⁰ Mike Cason, *What We Know About Alabama's Plans for 2 New Prisons*, AL.COM (Feb. 1, 2021), <https://www.al.com/news/2021/02/what-we-know-about-alabamas-plans-for-2-new-prisons.html> [<https://perma.cc/6JRB-2VXJ>].