



Civil Rights Update

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Seventh Circuit Resolves Confusion Over Elements of a Fourteenth Amendment Failure to Provide Medical Attention Claim

The Court of Appeals for the Seventh Circuit recently resolved confusion over the elements of a Fourteenth Amendment failure to provide medical attention claim. In *Pittman v. Madison Cnty*, the court held that a pretrial detainee does not have to show a defendant's subjective awareness of the risk of harm. *Pittman v. Madison Cnty*, 108 F.4th 561 (7th Cir. 2024)

In *Pittman*, a pretrial detainee at the Madison County jail attempted suicide while awaiting trial. 108 F.4th at 565. He survived but suffered a severe brain injury. *Id.* By and through his guardian and next friend, he brought suit against Madison County and various jail officials under 42 U.S.C. § 1983 and state law. *Id.* Pittman's 1983 § claim alleged that the defendants violated the Due Process Clause of the Fourteenth Amendment by failing to provide him with adequate medical care. *Id.* Pittman's case had a lengthy procedural history, including three appeals and three trials. *Id.* On appeal from the third trial and verdict for the defendants, Pittman challenged a jury instruction for his Fourteenth Amendment claim. *Id.* He argued that the instruction erroneously required proof that the officers were subjectively aware, or strongly suspected a high likelihood, of self-harm. *Pittman*, 108 F.4th at 565.

Pittman made this same argument in a prior appeal (*Pittman III*, 970 F.3d 823 (7th Cir. 2020)), and the Seventh Circuit rejected it. *Id.* at 567-68. On remand, the case went to trial for a third time, and, over Pittman's objection, the trial court instructed the jury in line with the court's ruling in *Pittman III*. *Id.* at 566. The jury returned a verdict for the defendant, and Pittman appealed. *Id.*

Despite having previously approved the challenged language in *Pittman III*, the Seventh Circuit held that the trial court, following its guidance in *Pittman III*, "erred (through no fault of its own)" by instructing the jury that Pittman must prove that the defendants were subjectively aware or strongly suspected a high likelihood of harm. *Id.* at 572.

In reaching this holding, the Seventh Circuit began its analysis by reviewing *Kingsley v. Hendrickson*, 576 U.S. 389 (2015), *Miranda v. County of Lake*, 900 F.3d 335 (7th Cir. 2018), and *Pittman III*, 970 F.3d 823.

In *Kingsley*, the United States Supreme Court held that an objective reasonableness standard applies to a pretrial detainee's claim of excessive force. 576 U.S. at 392. The Supreme Court explained that such a claim involves "two separate state of mind" questions: (1) "the defendant's state of mind with respect to his physical acts—i.e., his state of mind with respect to bringing about of certain physical consequences in the world;" and (2) "the defendant's state of mind with respect to whether his use of force was 'excessive.'" *Id.* at 395. The Supreme Court observed that the former safeguards against liability for negligently inflicted harm which is beneath the threshold of constitutional due process. *Id.*

In *Miranda*, the Seventh Circuit extended the objective reasonableness standard to pretrial detainees' medical care claims. 900 F.3d at 352. Conceptualizing the *Kingsley* standard, the Seventh Circuit concluded that a jury must decide two questions: (1) "whether the medical defendants acted purposefully, knowingly, or perhaps even recklessly when they

considered the consequences of their handling of [plaintiff's] case;" and (2) whether the defendants' actions were "objectively" reasonable. *Id.* at 353-54.

Pittman III came shortly after *Miranda* and concerned how to instruct a jury on *Kingsley*'s objective standard. *Pittman III*, 970 F.3d at 827-28. In *Pittman*'s second trial, which was reviewed on appeal in *Pittman III*, the trial court instructed the jury that *Pittman* had to prove four elements to prevail on his Fourteenth Amendment claim against the officers for failing to provide him with adequate medical care:

- (1) there was a strong likelihood that *Pittman* would seriously harm himself;
- (2) the defendants were aware of . . . or strongly suspected facts showing this strong likelihood;
- (3) they consciously failed to take reasonable measures to prevent *Pittman* from harming himself; and
- (4) *Pittman* would have suffered less harm if the defendants had not disregarded the risk.

Id. at 827.

On appeal in *Pittman III*, *Pittman* argued that the second and third elements of this instruction were inconsistent with *Kingsley* and *Miranda* because the language directed the jury to apply a subjective test rather than an objective test. *Id.*

The *Pittman III* court agreed that the instruction's use of the word "consciously" in the third element introduced a subjective component into the requirements for proving mental state. *Id.* But the court rejected *Pittman*'s argument that the instruction's second element—"the defendants were aware of . . . or strongly suspected facts showing [a] strong likelihood of harm"—was inconsistent with *Miranda*. *Id.* The court concluded that the element was consistent with *Miranda* because it went to *Miranda*'s first inquiry: whether the defendants acted purposefully, knowingly or recklessly. *Id.* at 828. The *Pittman III* court reasoned that "to act purposefully, knowingly, or recklessly, a defendant must have personal knowledge of—and thereby subjectively appreciate—the consequences of their actions." *Pittman III*, 970 F.3d at 827.

The Seventh Circuit next reviewed its decisions since *Pittman III*. In *Kemp v. Fulton County*, the court held that *Kingsley* abrogated pre-*Kingsley* case law "to the extent that [it] require[d] pretrial detainees to show, in a failure-to-protect case, that a defendant was subjectively aware of a substantial risk of serious injury." 27 F.4th 491, 497 (7th Cir. 2022). Instead, a pretrial detainee must show that the defendant "intend[ed] to carry out a certain course of actions," and "[a]t that point, the remaining question is whether that course is objectively reasonable." *Kemp*, 27 F.4th at 497.

The court noted it followed the same approach in *Thomas v. Dart*, 39 F.4th 835 (7th Cir. 2022), articulating the elements of a Fourteenth Amendment failure-to-protect claim without reference to a defendant's subjective awareness of the risk of harm. *Pittman*, 108 F.4th at 568-69.

Having "canvassed" its post-*Kingsley* decisions, the Seventh Circuit observed that *Miranda* and *Pittman III* could be read as requiring pretrial detainees alleging inadequate medical care claims to prove the defendants' subjective awareness of the risk of harm. *Id.* at 569. Yet in *Kemp* and *Thomas*, the court retreated from such requirements in evaluating the requirements for failure-to-protect claims. *Id.* The court attributed this inconsistency to its interpretation of *Kingsley*'s first state-of-mind inquiry: "the defendant's state of mind with respect to his physical acts." *Id.* *Pittman III* conceptualized this inquiry as requiring proof of *both* intentional physical action and awareness of the consequences of that action. *Id.* On the other hand, the court's failure-to-protect cases required only proof that a defendant intended to act. *Id.*

The Seventh Circuit acknowledged that it could not square *Pittman III* with its post-*Pittman III* precedent interpreting and applying *Kingsley*. The court concluded that "a pretrial detainee in a medical care case need not prove a defendant's subjective awareness of the risk of harm to prevail on a Fourteenth Amendment Due Process claim." *Pittman*, 108 F.4th at 570.



While recognizing its error, the court acknowledged that “[t]his is a very complicated area of law,” that *Kingsley* left unresolved several issues that the *Pittman III* panel faced, and that “[a]t the time of *Pittman III*, few courts had weighed in on these issues.” *Id.* at 571. But the court observed that since *Pittman III*, several fellow circuits now agree that a pretrial detainee does not have to prove a defendant’s subjective awareness of a serious risk of harm. *Id.*

Although the Seventh Circuit held that the trial court erroneously instructed the jury, it affirmed the judgment in favor of the defendants because it concluded that the mistake did not prejudice Pittman. *Id.* at 574.

The court offered the following guidance on how the trial court should have instructed the jury on the mental-state element in question: “to prevail, Pittman must prove that the defendants did not take reasonable available measures to abate the risk of serious harm to Pittman, even though *reasonable officers under the circumstances would have understood the high degree of risk involved*, making the consequences of the defendants’ conduct obvious.” *Id.* at 572 (emphasis in original).

This decision serves as a reminder to pay careful attention to the different status of pretrial detainees. Different constitutional provisions and different standards apply to sentenced prisoners and pretrial detainees. This is especially true in defending civil rights cases arising out of county jails, where sentenced prisoners and pretrial detainees are often held together in the same facility. This decision also serves as a warning to scrutinize jury instructions in detainee civil rights cases to ensure that a subjective component is not improperly introduced into the instructions.

About the Author

Keith B. Hill is a partner in the Edwardsville office of *Heyl, Royster, Voelker & Allen, P.C.* He has extensive experience advising governmental entity clients with respect to state and federal civil rights law as well as litigating claims brought under state and federal constitutions and other civil rights statutes. Mr. Hill has defended civil rights claims filed by detainees and inmates against correctional health care professionals, sheriffs, correctional officers, and police officers.

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