

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2005 CA 2288

JOYCELYN JENNA SHAW

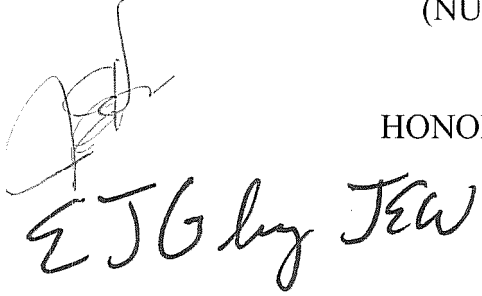
VERSUS

WASHINGTON PARISH SHERIFF'S DEPARTMENT  
AND AUBREY JONES, SHERIFF OF WASHINGTON PARISH

**DATE OF JUDGMENT:** NOV 15 2006

ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT  
(NUMBER 84,734), PARISH OF WASHINGTON  
STATE OF LOUISIANA

HONORABLE REGINALD T. BADEAUX, III, JUDGE



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BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

**Disposition: AFFIRMED IN COMPLIANCE WITH LA. URCA RULE 2-16.1B.**

*Welch, J. dissents with reasons.*

KUHN, J.

Plaintiff-appellant, Joycelyn "Jenna" Shaw, appeals the trial court's judgment, dismissing her claims for damages against defendant, Sheriff Aubrey Jones, arising from an injury she sustained when she worked in the records room of the Washington Parish jail.<sup>1</sup> For the following reasons, we affirm.

### **PROCEDURAL AND FACTUAL BACKGROUND**

On November 7, 2001, plaintiff, a deputy sheriff working in the records room at the jail, sustained an injury to her left knee.<sup>2</sup> Although the testimony of those present varied in details, the following facts are undisputed.

Upon her arrival to the Washington Parish jail, a female inmate, Melissa Miller, exhibited behavior indicative of drug usage, including increased strength and a combative temperament. She was housed in a padded cell in the jail, isolated from the rest of the inmates for her protection. Miller requested a shower on numerous occasions. After Miller had calmed down, plaintiff's co-employee, Deputy Shanda Taylor, a jailer, received permission to take Miller from the isolated padded cell into H Block for a shower.

Miller was escorted by Taylor into the H Block shower. Miller soaked herself with water but failed to use soap. When she indicated she was finished, Taylor challenged her assertion that she had completed her shower. A scuffle then ensued. Since Miller was undressed at the time of

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<sup>1</sup> It is undisputed that plaintiff's lawsuit falls within the ambit of the provisions of La. R.S. 23:1034(B), which exempts workers' compensation claims by sheriff deputies. *See Jones v. Traylor*, 93-2144, p. 1, n.1 (La. App. 4th Cir.4/28/94), 636 So.2d 1112, 1115 n.1, *writ denied*, 94-1337 (La.9/16/94), 642 So.2d 193.

<sup>2</sup> Approximately 20 days after plaintiff's injury, Sheriff Jones commenced service, filling the remainder of the prior sheriff's term; in July 2002, he assumed a new term.

the altercation, pursuant to operational policy, male deputies were unable to assist. Plaintiff, working in the jail's record room, proceeded to H Block to ascertain the source of the disturbance. En route, the head jailer, Deputy Greg Bush, advised plaintiff to proceed to H Block, ostensibly to lend assistance because she was the only other female present in the jail.

Plaintiff and Taylor were able to subdue Miller, and the inmate dressed herself. As Miller was escorted out of H Block, Taylor told her that she would be returning to the padded cell. Miller became very combative and seized the H Block door in an effort to prevent being moved. Since by then Miller was clothed, Bush was able to assist the two female deputies in releasing the inmate's hold on the door. During the release, Miller accidentally fell, landing on plaintiff's left leg and causing her injuries.

Plaintiff subsequently filed this lawsuit, seeking damages for the alleged negligence of the sheriff as the party responsible for the conditions at the jail. After a trial on the merits, the trial court dismissed plaintiff's claims. In this appeal, plaintiff challenges the trial court's liability determination.

## **DISCUSSION**

La. R.S. 23:13 provides:

Every employer shall furnish employment which shall be reasonably safe for the employees therein. They shall furnish and use safety devices and safeguards, shall adopt and use methods and processes reasonably adequate to render such employment and the place of employment safe in accordance with the accepted and approved practice in such or similar industry or places of employment considering the normal hazard of such employment, and shall do every other thing reasonably necessary to protect the life, health, safety and welfare of such employees. Nothing in this Section shall apply to employment in private domestic service or to agricultural field occupations.

See also La. C.C. art. 2315.

Plaintiff contends that the failure of the sheriff to sufficiently staff the jail with female deputies and to provide adequate training for restraining combative inmates amounted to a breach of his duties under La. R.S. 23:13 and La. C.C. art. 2315. Plaintiff urges that the testimony of the three deputies established that the jail was understaffed. Similarly, she maintains that Taylor's testimony that the sheriff provided her with no defensive training on how to restrain a prisoner in Miller's condition established that the training of jailers was inadequate.

Although plaintiff asserts the sheriff failed to staff the jail with a sufficient number of female jailers, she failed to present any evidence establishing an adequate ratio of jailers to inmates. We find it noteworthy that while the deputies testified that at the time of this incident one female jailer was on duty and another had left the jail on a transport mission, plaintiff failed to put forth any evidence showing how many female inmates were actually housed at the Washington Parish jail. And plaintiff further failed to present evidence establishing the standard of adequate training in the proper handling of inmates in rural jails similar in size to the Washington Parish jail.<sup>3</sup> While Bush indicated that all deputies should be trained in self-defense tactics and techniques, there is no evidence of what these techniques should include or the identification of a specific tactic that Taylor should have known but did not employ at the time of the incident. Thus, plaintiff failed to meet her burden of proving that sheriff's failure to sufficiently staff the jail with female jailers or to adequately train his deputies in restraining a combative inmate rendered her employment unsafe.

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<sup>3</sup> Sheriff Jones testified that Washington Parish is "a rural parish" and his office is "no frills" due to limited resources.

Additionally, we note that cause-in-fact is generally a "but for" inquiry, which tests whether the accident would or would not have occurred but for the defendant's substandard conduct. *Bonin v. Ferrellgas, Inc.*, 2003-3024, pp. 5-6 (La. 7/2/04), 877 So.2d 89, 94. Whether the defendant's conduct was a cause-in-fact of the injuries is a factual question to be determined by the fact finder. *Id.*

A court of appeal may not set aside a trial court's finding of fact in the absence of manifest error or unless it is clearly wrong. *Id.* Under the manifest error standard, in order to reverse a trial court's determination of a fact, an appellate court must review the record in its entirety and (1) find that a reasonable factual basis does not exist for the finding, and (2) further determine that the record establishes that the fact finder is clearly wrong or manifestly erroneous. *Stobart v. State through Dep't of Transp. and Dev.*, 617 So.2d 880, 882 (La. 1993). A reviewing court must give great weight to factual conclusions of the trier of fact; where there is conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel that its own evaluations and inferences are as reasonable. The reason for this well-settled principle of review is based not only upon the trial court's better capacity to evaluate live witnesses (as compared with the appellate court's access only to a cold record), but also upon the proper allocation of trial and appellate functions between the respective courts. *Canter v. Koehring Co.*, 283 So.2d 716, 724 (La. 1973).

Implicit in the trial court's conclusion that the sheriff was not liable to plaintiff is a factual finding that any insufficiency in staffing was not the cause-in-fact of plaintiff's injuries. The undisputed evidence was that when Miller fell onto plaintiff, she was dressed. Thus, the jail policy precluding

male deputies from lending assistance when an inmate was undressed was inapplicable. Because Miller was dressed, all deputies present at the time were available to assist, including Bush who actually subdued the combative inmate. Therefore, despite the deputies' testimony that there was only one female jailer at the time plaintiff sustained her injury, a reasonable factual basis exists for finding that in addition to Taylor, male deputies were present and available to subdue Miller when she suddenly became combative. Thus, the trial court's implicit factual conclusion that understaffing of female jailers was not the cause-in-fact of plaintiff's injuries is duly supported by the evidence and, therefore, not manifestly erroneous.

The trial court's conclusion that the sheriff was not liable to plaintiff likewise implicitly finds that any inadequacy in Taylor's training was not a cause-in-fact of plaintiff's injuries. This factual conclusion also is not manifestly erroneous. It was undisputed that at the time plaintiff was injured, Miller was dressed, no longer combative, and proceeding from H Block to the padded cell; Bush and other male deputies were available to assist Taylor in escorting the inmate. Thus, Taylor's testimony that she had not received training in handling a combative inmate fails to establish either that all deputies at the jail, including Bush, were not adequately trained or that such training on either Taylor's or plaintiff's part would have prevented Miller from falling on plaintiff's leg.

In sum, plaintiff failed to establish the standard of care for adequate training and sufficient staffing so as to sustain her burden of proving that the sheriff failed to adopt and use methods and procedures that would have prevented the accident at issue. Moreover, the trial court's implicit findings

that neither insufficient staffing of female jailers nor inadequate training was the cause-in-fact of plaintiff's injuries are not manifestly erroneous.<sup>4</sup>

For these reasons, the trial court's judgment is affirmed in compliance with La. U.R.C.A. Rule 2-16.1B. Appeal costs are assessed against plaintiff, Joycelyn "Jenna" Shaw.

**AFFIRMED IN COMPLIANCE WITH LA. URCA RULE 2-16.1B.**

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<sup>4</sup> Citing *O'Connor v. Litchfield*, 2003-0397 (La. App. 1st Cir. 2/21/03), 864 So.2d 234, *writ not considered*, 2004-0655 (La. 5/7/04), 872 So.2d 1069, the trial court indicated that plaintiff's claim was based upon theories of negligence pursuant to La. C.C. art. 2315 and liability under La. C.C. art. 2317. Unlike the O'Connors, who contended that the recently-mopped floor created an unreasonable risk of harm in the sheriff station premises in which the deputy fell, plaintiff in this case maintains that the sheriff's liability is predicated on his failure to sufficiently train the deputies who served as jailers and an understaffing of female jailers, neither of which constitutes a condition in the premises. Because the trial court correctly identified the conduct upon which plaintiff averred liability and appellate courts review judgments -- not the reasons for judgment -- *see Huang v. Louisiana State Bd. of Trustees for State Colleges and Universities*, 99-2805, pp. 4-5 (La. App. 1st Cir.12/22/00), 781 So.2d 1, 6, we find the trial court's reliance on *O'Connor* inconsequential in disposing of the issues raised on appeal.

In addition, plaintiff asserts that the sheriff is vicariously liable for the negligence of Taylor and Bush. Since she has not briefed this argument, we may consider it as abandoned. See La. U.R.C.A. Rule 2-12.4. Nevertheless, we note that to the extent plaintiff contends that the sheriff may be held liable under La. C.C. art. 2320 because Taylor should have requested, or Bush should have supplied Taylor with, assistance from another female jailer in escorting Miller to the shower, that contention lacks merit. The record supports the conclusion that Miller's subsequent outburst was not foreseeable conduct for which Taylor or Bush should have reasonably anticipated a need for assistance. *See Todd v. State, Through Dep't of Soc. Services*, 96-3090, p. (La. 9/9/97), 699 So.2d 35, 38.

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WELCH, J., DISSENTING.



I respectfully dissent because my review of the record reveals sufficient evidence presented by the plaintiff to establish clear negligence on the part of the defendant, which caused the injuries sustained by her as a result of the jailhouse incident.

First, I do not agree with the majority's conclusion that record reveals that at the time of the incident, inmate Miller was "calm" and that it was not foreseeable that she would become combative again. The evidence presented at trial on this issue consisted of the testimony of the plaintiff, Deputy Taylor, and Mr. Bush. **All three** of these individuals testified that prior to and **including the day of the incident**, they personally observed inmate Miller's violent and combative behavior, and based on personal experience, attributed it to the fact that she was in the process of detoxification from being either on drugs or highly intoxicated, or both, when she arrived at the jail. Mr. Bush testified that when Miller arrived at the jail, at least 24 hours prior to the incident at issue, she was under the influence of some type of drug that made her violent and combative, necessitating her being placed in the padded cell. He testified, however, that on the morning when he allowed Deputy Taylor to take Miller out of the cell to the showers, Miller was "coming down" and "becoming more cooperative." Deputy Taylor testified that she was at work when Miller was initially booked several days before the incident, and that Miller, under the influence of drugs or alcohol was "very irate" and "majorly out of control." According to Deputy Taylor, every day since Miller's



arrival at the jail, she had problems with Miller's constant screaming and violent and combative behavior. The plaintiff testified that she observed inmate Miller on the day that she was booked and she was being very combative at that time. Although she did not personally observe Miller again prior to the date of the accident, she did hear her constant screaming for a shower from inside the padded cell on the morning of, but prior to, the incident. Based on this evidence, which was uncontradicted, the record does not support a finding that Miller was "calm," to the contrary, she exhibited a pattern of belligerence and violent, problematic behavior prior to and on the date of the incident such that it was foreseeable she may resume physical combativeness, particularly once removed from the padded cell and escorted by the lone female deputy at the jail. Under these facts and circumstances, it was negligent for jailer Bush to give permission for Deputy Taylor to single-handedly remove Miller from the protections of the padded cell and into the H block shower. Further, as admitted in her testimony, Deputy Taylor was negligent in that she knew she should not be escorting Miller by herself and that she probably needed help to do it, but she did it anyway without obtaining help.

Completely ignored by the majority opinion is evidence in the record revealing that although there is a shower located inside the padded cell at the jail, it was not used for inmate Miller's shower. According to Deputy Taylor, she was aware there was a shower in the padded cell, but she did not use it or think of asking to use it when Miller requested one because, "I've never seen it used the whole time I was employed there." According to Mr. Bush, there was a shower in the padded cell, but at the time of the incident, they were having problems with the plumbing and it was not working; therefore, it was necessary for Miller to be moved from the protection of the padded cell to H block about 20 to 30 feet away in order to grant her request for a shower. No evidence was presented by the

sheriff to explain or defend this showing of negligence on its part.

Regarding plaintiff's allegations of understaffing and lack of training, the record contains the following evidence. Mr. Bush testified that the Washington Parish Jail Complex and Procedures Manual contains a special section with instructions for the normal procedure to be employed when handling an inmate who is under the influence of drugs, alcohol, or is otherwise combative. The manual provides that inmate is to be placed in restraints in a padded holding cell where "[she] won't hurt [her]self or hurt someone else," and that she be kept in restraints while being moved about the jail for the safety of the inmate as well as other inmates and deputies. Mr. Bush testified that the manual also provides that all deputies handling inmates should be trained in some kind of self-defense, "tactics and techniques" to deal with a violent and combative inmate, including learning restraint holds and the use of other restraints when necessary. Notwithstanding, Deputy Taylor testified that she was neither given any instruction or training manuals, nor was she provided any kind of training for her job. According to her, the only training she received was "learned on hand." The majority concludes that a lack of training was not proven because the plaintiff did not introduce evidence of the specific training or tactics that the Deputy should have had. Notwithstanding the specifics of the training required by the sheriff's office, in my opinion, Deputy Taylor's unrefuted testimony that she received **no training whatsoever** sufficiently establishes a lack of training and any finding to the contrary constitutes manifest error.

Both Deputy Taylor and Mr. Bush testified that the jail was understaffed of female deputies on the date and at the time of the incident. According to Mr. Bush, there was another female employed that day, but she was out "on a transport" when the incident at issue occurred; thus, they were "shorthanded." Mr. Bush testified that is why he asked Deputy Shaw, who was working in the records room, to assist

Deputy Taylor in subduing inmate Miller. According to Mr. Bush, he assumed Deputy Shaw was trained to handle combative and violent inmates. Deputy Taylor testified that she knew she should probably have had some help in getting Miller to the H block showers, she also knew she was the only female deputy there at the time and Miller had been requesting the shower for several days.

The foregoing testimony was essentially undisputed and uncontradicted. The only evidence presented by the defendants was the testimony of the current sheriff of Washington Parish, Aubrey Jones, concerning the financial condition of the sheriff's office and Sheriff Jones' personal dealings with the plaintiff.

Based on the foregoing, I believe the trial court manifestly erred in finding the plaintiff failed to prove negligence on the part of the sheriff's office. Notably, in its reasons for judgment and adopted by the majority of this court, the trial court found a lack of evidence to corroborate the short-staffing allegations, stating, “[n]o guidelines or statistical data was presented to show a proper ratio of jailers needed based upon the number of inmates; no evidence was presented to show whether there is a specific course requirement for jailers or record clerks, or whether the Sheriff failed to satisfy any such training requirement.” I agree that the plaintiff did not introduce statistical data regarding the proper ratio of jailers to inmates; however, in my opinion, even in the absence of this specific evidence, the plaintiff nevertheless sufficiently established that the jail was understaffed of female deputies at the time of the incident. Both, head jailer Mr. Bush and Deputy Taylor testified that they were understaffed at the time of the incident, because the other female deputy employed during that shift was away on a transport, leaving Deputy Taylor as the *only* female deputy on duty when she took inmate Miller to the shower. That fact, together with the policy that only female deputies attend to inmates while in the bathroom or otherwise not fully dressed, leads to the inevitable conclusion, even without supporting “statistical data” that the jail was

understaffed of female deputies and that such understaffing was causally related to the ensuing incident.

Therefore, I find the record sufficiently supports plaintiff's claims of negligent acts by the sheriff's office even without the specific proof erroneously required by the trial court and affirmed by the majority. As noted above, the uncontradicted testimony of the plaintiff's witnesses established that at the time of the incident, there was only one female deputy working, and that deputy had not received any of the required training in self-defense and restraint holds. The record additionally established that the shower contained in the padded cell room was not in service at the time and no explanation was offered by the defendants to refute this showing of negligence. Finally, the record establishes that under the circumstances presented, the head jailer's decision to grant inmate Miller's request to be taken out of the padded cell for a shower in the regular cell block, when she was known to be exhibiting violent and combative behavior and when there was only one female deputy employed on the floor to escort her to and back from the shower, was additional negligence for which the defendants can be held vicariously liable. Cf. Brou v. Orleans Parish Criminal Sheriff's Office, 2003-1760 (La. App. 4<sup>th</sup> Cir. 2/16/05), 897 So.2d 817; Scheurmann v. Foti, 2004-0694 (La. App. 4<sup>th</sup> Cir. 2/2/05), 894 So.2d 1199 (where the sheriff's office defendants were found not liable for injuries caused by a combative inmate when the inmate had not shown any propensity for violence and the outbursts of violence were not reasonably foreseeable).

Because I find the record wholly supports that the defendant was negligent and that negligence created an unreasonable risk of harm, which caused injury to the plaintiff, I would reverse the trial court's judgment and render appropriate damages.