

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

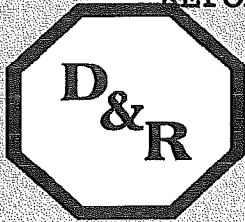
JASON WADDELL, as)
Guardian Ad Litem of Lacey)
Danielle Marez, an)
incapacitated person,)
Plaintiff,)
VS.)

Case No. CIV-11-1037-D

BOARD OF COUNTY)
COMMISSIONERS OF CLEVELAND)
COUNTY,)
JOSEPH LESTER, in his)
official capacity)
CALISTA HULLETT f/k/a)
CALISTA HARLOW, individually)
and in her official capacity,)
ESW CORRECTIONAL)
HEALTHCARE, LLC, an Oklahoma)
limited liability company,)
SOONER MEDICAL STAFFING,)
LLC, an Oklahoma limited)
liability company,)
Defendants.)

COPY

DEPOSITION OF JOE. K. LESTER
TAKEN ON BEHALF OF THE PLAINTIFF
IN NORMAN, OKLAHOMA
ON OCTOBER 18, 2013



REPORTED BY: SUSAN J. FENIMORE, CSR, RPR
METROPOLITAN BUILDING MID-CONTINENT TOWER
400 North Walker, Suite 160 401 South Boston, Suite 310
Oklahoma City, OK 73102 Tulsa, OK 74103
405-235-4106 918-599-0507

depo@dtreporting.com

REPORTING & VIDEO, INC.

Joe Lester

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Joe K. Lester,
after having been first duly sworn at 11:01 a.m.
deposes and says in reply to the questions propounded
as follows, to wit:

* * * * *

DIRECT EXAMINATION

BY MR. ERDOES:

Q Would you state your full name please?

A Joseph K. Lester, L-e-s-t-e-r.

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Q Tell me what you understand this lawsuit's about.

A I understand that a person was -- had gone to court for failure to appear, showed up in the afternoon, they were supposed to be there in the morning, and that the judge ordered the deputies to take them into custody. And that a subsequent search of the young lady's purse was made in the booking area and drugs were found in it.

When they were changing her out, they found that she was trying to hide drugs that were in her underwear and that she had put some pills in her mouth and they had her spit them out.

Q And that's what this lawsuit is about?

A And that she was charged with that, she was placed in -- she had filled out her medical form, she

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1 had checked -- I read the medical form. Several
2 boxes on it are medical check in.

3 She had been placed in a cell because of
4 her possibly swallowing one of these pills. I read a
5 report where the nurse checked on her later and then
6 said she was fit to go in to the -- back to the cell
7 at that time.

8 And three days later she was heard gurgling
9 by somebody on a top bunk and they pushed the buzzer
10 and the detention staff came and cleared the other
11 people out, put them in other cells, which is policy,
12 to lock everybody down for the safety of the
13 detention personnel. And they proceeded to give
14 first responder aid to her and ambulance was called
15 and she was transported to Norman Regional where she
16 remains in -- not in Norman Regional, but she remains
17 in a coma.

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Q You are the final policy maker for the Cleveland County Sheriff's Office; is that right?

A Yes.

Q The buck stops with you; is that a fair statement?

A I make -- I make the final decision on all policies.

Q You make the hiring and firing decisions for your staff?

A I am the final approval of all hiring and firing.

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Q All right. Tell me what those other things that were going on that you referenced that led you to start negotiating in January of 2009 with Sooner Medical?

A The first full week that I was in office, my fiscal unit head and her assistant came into my office carrying a bunch of envelopes that were

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1 unopened, unpaid medical bills to Norman Regional
2 Hospital and other providers. And they said that
3 they had a whole desk full of these things, that they
4 ultimately went back for the interim sheriff's tenure
5 to Sheriff Beggs' tenure where they just hadn't paid
6 these bills. And I knew that we had some liability,
7 we were getting calls from the providers that they
8 wanted their money, half the money for the department
9 had been spent already. And we didn't have -- I
10 think it was around 600,000 at that time, ultimately
11 it came up to over a million dollars in unopened,
12 unpaid medical bills and --

13 Q Were these all medical bills as a result of
14 treatment to detainees, inmates?

15 A They had been sent to Norman Regional
16 Hospital and when somebody goes to the hospital,
17 whether it's a headache or what, it's a big expense.
18 And at that time they had a nurse that would come to
19 work eight hours a day and I thought that they needed
20 somebody there, a nurse there 24-7 for the size of
21 the jail.

22 At that time I called my campaign
23 strategist, because when I was running, he had
24 introduced me to John Echols and --

25 Q And who is John Echols?

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1 A He was -- at that time he was running for a
2 state house seat, same time I was running for
3 sheriff. He lost that house seat. I think he was
4 running against Mike Reynolds.

5 And in talking to him at some political
6 event, I found out that he provided nurses for
7 nursing homes throughout the state. And I went to
8 him and asked him if they ever thought about
9 broadening their horizons and he asked what I meant
10 and I told him what I was faced with and what I
11 wanted to do.

12 They came down, they evaluated our facility
13 at the old jail, went back and forth. He worked with
14 Dave Batton from the district attorney's office,
15 contract was drawn up and it took from that time
16 until March for the commissioners to approve that
17 contract, that final contract that was done.

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Q Your proposed plan of correction when you first were cited, given a notice of violation of the prison overcrowding conditions, was to move additional inmates to the Pottawatomie County jail to reduce your prison population; is that right?

A Yes, that was in 2009, yes.

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Q Do you have agreements with neighboring counties to house your detainees when your jail is overcrowded?

A The county commissioners had an agreement with Pott County to take prisoners when we were getting a lot of overcrowding issues from the jail inspector.

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Q Did you have to pay the Pottawatomie County Commissioners for housing your detainees and inmates?

A The Pott County jail is not operated by the county commissioners, it's operated by a trust. And our county commissioners are the ones that entered into that agreement with the trust of Pott County to take the prisoners over to their jail and they housed them there.

Q But I guess my question is did your county have to pay the trust in Pott County, regardless who the governing body is that oversaw the jail?

A Yeah, the county commissioners' budget paid for that.

Q Now, do you house prisoners or detainees that are from other counties and get paid in turn by those counties?

A No.

Q What about DOC inmates, do you house DOC inmates and get paid by the State Department of Corrections for housing those?

A I do now.

Q Did you back in 2009?

A No.

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1 Q When you had a prisoner who had been
2 sentenced, meaning he was going away and not going to
3 be spending time in the county, but actually in a
4 state --

5 A Yes.

6 Q -- run facility, was there a method by
7 which that prisoner could be expeditiously removed
8 from the facility to reduce your overcrowding?

9 A Yes.

10 Q Tell me about that.

11 A We were on an emergency pickup order for
12 the state prisons because of our overcrowding and we
13 would take them there. The only time that during all
14 of our overcrowding at that time that we had those
15 state prisoners would be if the district attorney's
16 office had us go pick up a prisoner at the prison to
17 bring back, he or she may be incarcerated in the
18 state prison but have additional charges here or have
19 a hearing to get some charge reduced or whatever, but
20 we would have to bring them back and we would house
21 them until that hearing and then transport them back
22 to the prison.

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(Exhibit Number 6 marked for identification purposes and made part of the record.)

Q (By Mr. Erdoes) Now, here is Exhibit 6. This is dated March 9th, 2009. This is now when you have taken over as the sheriff; is that right?

A Yes.

Q I believe it may have been -- was it the

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1 first inspection after you were sworn in?

2 A I had in January of 2009, I forget his
3 name, but the head of the -- of the jail inspectors,
4 brought him down to the sheriff's office, he came
5 down and met with me and we had about a two-hour
6 meeting where he toured the jail with me and saw that
7 it was overcrowded. And they had just passed the
8 bond issue in November to build the new jail and it
9 was going to happen.

10 He was instrumental in getting that
11 happening and going to the commissioners and telling
12 them that they were going to be fined if they didn't
13 get a new jail built.

14 And I believe also during that time we had
15 a discussion about none of the employees working in
16 the jail, and I think we had 22 at that time, to
17 watch around the clock, seven days a week, that none
18 of them had received the jail standards training
19 and --

20 Q When did you discover that?

21 A When I first got in.

22 Q All right. So what did you do to correct
23 that situation?

24 A Worked with him and Ed Miller, who was the
25 acting head of the jail, and I believe it was Alicia,

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1 who's the jail inspector.

2 Q Alicia Dickson?

3 A Yeah. I believe --

4 Q Or Dickerson?

5 A -- she and somebody came down and taught
6 the -- all the employees and gave them the test and
7 they all passed. And then we began hiring additional
8 personnel starting my second week in office to
9 increase the number of staff in the jail for the
10 protection of both the inmates and the employees.

11 Q When was the new jail finally opened for
12 business?

13 A We're coming up in February for our second
14 year. So a year ago last February.

15 Q February of 2012 is --

16 A Yes.

17 Q So three years after you took office is
18 when the jail was finally opened?

19 A Yes.

20 Q All right. So Exhibit 6 we now know was
21 your first jail inspection and according to
22 Ms. Dickerson, the lady you mentioned earlier as
23 being the state investigator or inspector, she found
24 that you had women and other male prisoners sleeping
25 on the floor in their cells; is that right?

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1 A Yes, in what we call boats with mattresses.

2 Q But it was still a deficiency, according to
3 the state health department, correct?

4 A Yeah, because of the overcrowding, yes.
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Q (By Mr. Erdoes) What led to that large increase in population?

A You know, I don't know what exactly led to it, but I would imagine that it would be Oklahoma City, Moore, Norman, Noble and Lexington and OU Police Department arresting more women for various charges and the judges holding them in jail for whatever reason.

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Q Had you entered into any agreements to get paid by other counties or other agencies, be it DOC to house their inmates or detainees by that time?

A Not then and not now.

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Q (By Mr. Erdoes) Now, just before we got off track, we asked about who is medical authority according to these records from the state health department and we discussed Sooner Medical or SoonerCare, you mentioned you read the contract that was attached to Sheriff Lester's --

A No.

Q Sheriff Burnett's deposition, correct?

A To Undersheriff Burnett's.

Q Did you read the portion where it said that ESW was a subsidiary of Sooner Medical?

A Yes.

Q Do you understand what that means?

A My understanding, when they changed that, in talking with Mr. Echols, Sooner Medical, as I mentioned before, provided nurses to nursing homes throughout the state. And they wanted to break off the jail part of it to get it away from Sooner

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1 Medical so they could, I guess, do the books and
2 expand from this county to other counties to provide
3 the same service.
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Q And A pod is the area where the women are housed at the old Cleveland County Detention Center?

A Yes.

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Q Let me stop you right there. What do you mean by "if you build it, they will come"?

A Well, we have the room now and before when we were in the old jail, I had discussions with the police chiefs of Moore and Norman that when you have municipal prisoners, write them the tickets, you know, have your officers write, don't get -- don't get our jail overcrowded, we can't hold them.

Q Did they comply with your request?

A To the biggest part they did. But when you -- when they would have a drunk individual, they would bring them to the jail.

Q You don't want to fill your jail with drunk individuals, do you?

MS. FAGAN: Object to the form.

MS. LEE: Same objection.

THE WITNESS: I don't want to fill my jail with anybody. I look for ways to keep the jail population down.

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Q Okay. What is the purpose of site checks, sir?

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A To make sure that everything is okay.

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Q What exactly does the site check entail when you are conducting a site check of all areas of each cell?

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A The status of the individuals in those cells.

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Q You're checking on the safety and well-being of the people in the cells, correct?

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A Yes.

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Q (By Mr. Erdoes) The cellmates have an intercom system where they can alert --

A Yes.

Q -- your staff of any deteriorating health conditions of a detainee as well, correct?

A Yes.

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Q Once someone is housed in a cell though, and their health is deteriorating in such a manner that they need medical attention, who makes the decision on whether to have that person removed from your facility for outside medical treatment under your current contract with ESW and Sooner Medical?

A Under the contract that we had during this occurrence?

Q Right.

A Would be Sooner Medical.

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Q (By Mr. Erdoes) Well, your policy is that, according to what I've read in your detention manual, that you're to provide the medical care and treatment for detainees equivalent to that of what citizens in the community would receive, do you remember reading that in your --

A Yes.

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(Exhibit Number 20 marked for identification purposes and made part of the record.)

Q (By Mr. Erdoes) Have you seen a copy of this document before, sir?

A Yes.

Q Is that your use of force policy?

A Yes, and that's standard throughout the profession.

Q Okay. That's the use of force policy that you have in place at the detention center; is that right?

A Yes.

Q It says under the policy that, "Physical force may be used only when an attack by an inmate on a facility employee, visitor, or other inmate is actually occurring, is clearly imminent, or when other lesser means have failed to achieve a legitimate and necessary objective." Do you see that?

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A Yes.

Q Then it specifically says, "Physical punishment of an inmate by a deputy shall not be permitted under any circumstances." Do you see that?

A Yes.

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Q Under the contract that we were previously talking about, we talked about how the maximum liability was \$50,000 for any off site medical care, correct?

A Yes.

Q Now, isn't it true if ESW determined that it was a preexisting condition of an inmate, then they would not pay for it, even if it was within the \$50,000 maximum liability?

MR. ERDOES: Object to the form.

THE WITNESS: That is correct.

Q (By Ms. Lee) And also, it was ESW's responsibility to, according to the contract, fill out insurance claims on behalf of the inmates if they had insurance?

A Yes.

RECEIVED

OKLAHOMA STATE DEPARTMENT OF HEALTH
 PROTECTIVE HEALTH SERVICES
 Jail Inspection Division
 1000 NE 10th Street
 Oklahoma City, OK 73117-1299

MAR 16 2009

Jail Inspection Program

JAIL INSPECTION REPORT

Telephone: (405) 271-3912 Fax: (405) 271-5304

www.health.ok.gov

DATE: 3-9-09

PAGE OF 1 OF 2

Type of Facility: (Circle One)	COUNTY	CITY	LOCK-UP	HOLDING
Facility: <u>Cleveland</u>	Address: <u>203 S Jones</u>			
City: <u>Deming</u>	County: <u>Cleveland</u>			Zip: <u>73064</u>
Sheriff/Chief: <u>Lester, Joel</u>	Jail Administrator: <u>Ed Miller</u>			
Area Code: <u>405</u>	Office Phone: <u>366-5778</u>	Jail Phone: <u>321-8600</u>		
Medical Authority: <u>none @ this time, Norman Regional for emergency</u>				
Staffing: Day Shift (M) <u>4</u> (F) <u>1</u>	Evening (M) <u>3</u> (F) <u>2</u>	Night (M) <u>4</u> (F) <u>1</u>		
Total Male Beds: <u>123</u>	Female Beds: <u>16</u>	Juvenile Beds: <u>can't hold</u>	Special Cells: <u>0</u>	
Population Today: <u>241</u>	Rated Capacity: <u>171</u>	Avg. Daily Population: <u>185</u>	Men <u>165</u>	Women <u>20</u>
Sentenced: Male <u>13</u> Fem <u>0</u>	Juv Male <u>8</u>	Juv Fem <u>1</u>	Total <u>22</u>	
Unsented: Male <u>23</u> Fem <u>0</u>	Juv Male <u>0</u>	Juv Fem <u>0</u>	Total <u>23</u>	
DOC J&S: <u>13</u>	Menu Approved by Licensed Dietitian (long Term Jail Only)	yes <input checked="" type="checkbox"/>	no <input type="checkbox"/>	
Food Prepared By: <u>Trudy + Phil Super</u>				

DEFICIENCIES: Chapter 310:670

- 5-8-(1) The facility does not have a health care plan & no assistance from a medical authority nor does the facility have a designated medical authority. There is no plan of responsibility regulation written job descriptor, because there is no medical authority.
- 5-8-(6) This facility does not have 24 hr medical authority.
- 5-11-(2) (Trudy Pod) Reciprocity, female pod, B pod has 24, C pod-28, D pod-8. Some prisoners sleeping on the floor. Not enough toilet banks (E Pod-2) prisoners = 8 beds, F pod = 11 prisoners = 6 banks, G 47 pris = 24 bed. H pod 47 = 24 beds

I ACKNOWLEDGE RECEIPT OF THIS REPORT AND SWEAR THAT THE INFORMATION GIVEN BY ME IS TRUE TO THE BEST OF MY KNOWLEDGE.

Ed Miller

Signature of Jail Representative

+ also called Trudy Pod.

I CERTIFY THAT THIS INSPECTION COVERED ALL APPLICABLE STANDARDS.

Alvin Dickson

Signature of Inspector/Investigator

405-203-5710 cell

Inspector's Telephone Number

escorted to cell & exited w/ slonik & undershirt.



4.08 USE OF FORCE

POLICY

Only that amount of physical force necessary to maintain or regain control of any inmate will be used by the staff of the Detention Center. Physical force may be used only when an attack by an inmate(s) on a facility employee(s), visitor(s), or other inmate(s) is actually occurring, is clearly imminent, or when other lesser means have failed to achieve a legitimate and necessary objective. Physical punishment of an inmate by a Deputy shall not be permitted under any circumstances.

PROCEDURE

The following procedural guidelines are designed to illustrate that Deputies have a number of choices in handling violent or potentially violent situations in order to give an inmate every opportunity to cease his/her disruptive or assaultive activity and cooperate with the Deputy. The following steps should be followed whenever possible in sequence:

1. Uncooperative inmate: The Deputy who encounters an uncooperative inmate (e.g., refuses to enter cell, refuses the frisk search, refuses to be removed from cell) will take the following actions:

a. Verbal Persuasion: Attempt to convince the inmate to cooperate.

b. Verbal Warnings: If verbal persuasion fails, warn the inmate of the consequences of non-cooperation (use of force, disciplinary sanctions).

c. Show of Force: If warnings are not effective, call for backup personnel in an attempt to intimidate the inmate through a show of force.

d. Control Holds: If a show of force is insufficient (or impossible) the Deputy shall attempt to use the physical holds designed to gain control of the inmate (no blows will be struck by the Deputy unless the resisting inmate becomes an attacker).

