

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted February 24, 2025*

Decided February 24, 2025

Before

MICHAEL B. BRENNAN, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 24-2055

LIONEL GIBSON,
Plaintiff-Appellant,

v.

CHELSEA FOX and RYAN GROVE,
Defendants-Appellees.

Appeal from the United States District
Court for the Northern District of
Indiana, South Bend Division.

No. 3:21-cv-837-JD

Jon E. DeGuilio,
Judge.

ORDER

Lionel Gibson sued two staff members at the Indiana prison where he was formerly incarcerated. He alleged that they violated his Eighth Amendment rights by failing to protect him from an attack. *See* 42 U.S.C. § 1983. The district court granted summary judgment for the defendants, concluding that they had taken reasonable steps

* We have agreed to decide this case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

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to ensure Gibson's safety, and so no reasonable jury could find that they were deliberately indifferent. We affirm.

We recite the facts in the light most favorable to Gibson, the party opposing summary judgment, and where a fact is disputed, we credit Gibson's version over the defendants'. See *LaBrec v. Walker*, 948 F.3d 836, 839 (7th Cir. 2020). In 2013, gang members at Gibson's prison learned that he was a confidential informant and then threatened him with violence. Because of the threats, prison officials ordered that Gibson be separated from two prisoners: William O'Bryan and Calvin Lyons. Since then, Gibson has been transferred to various other Indiana prisons; at each one, his identity as an informant was eventually exposed, and he was threatened or harmed.

Gibson was transferred to Miami Correctional Facility in Bunker Hill, Indiana. By November 2019, both O'Bryan and Lyons were housed there too, but the prison did not impose any formal separation between them and Gibson. And again, word circulated at Miami that Gibson had been a confidential informant. Another prisoner was assaulted after purportedly warning jail staff that Gibson—"the inmate occupying 439 in K"—was to be killed. After the assault, the prisoner told Gibson about the threat.

The next day, Gibson discussed his safety concerns with Chelsea Fox and Ryan Grove, members of the prison's case management team. Gibson told Fox and Grove about his prior problems with O'Bryan and Lyons, showed them documents suggesting that he should be separated from them, and informed them about the plan to have him killed. He asked them to transfer him to Housing Unit I for his safety. He did not ask for protective custody, which would place him in the Restricted Housing Unit; he believed that Unit I was more secure than his current unit but would still allow him access to programs (such as the college courses he was taking). Fox and Grove looked up Gibson's separatee list and did not see O'Bryan or Lyons on it. Gibson says that they also viewed his file, where they would have seen notations that he had been exposed as an informant at other facilities.

Fox and Grove told Gibson that they would coordinate his transfer that day, and, in the meantime, he should "act normal." Later that morning, Fox emailed the manager of Gibson's housing unit, requesting his transfer to Unit I, though she did not mention the threat to Gibson's life. (The manager responded a few days later, forwarding the request to another official but expressing doubt that the move could occur.) Later that afternoon, Grove came to Gibson's cell and told him that they were "working on a move within the hour." Fox's and Grove's shifts ended that afternoon, and they left the prison before Gibson was moved.

That night, several inmates attacked Gibson—who had not been moved—and he was stabbed in the hand. After the attack, another prison official secured Gibson’s transfer to Unit I. Gibson was later transferred to another prison and designated for statewide protective custody.

Gibson then sued Fox and Grove, alleging that they violated his rights under the Eighth Amendment when they failed to protect him from the attack. *See* 42 U.S.C. § 1983. The defendants moved for summary judgment, arguing that Gibson could not show that they were deliberately indifferent to his serious risk of harm because they responded to his concerns reasonably. The district court agreed and granted their motion for summary judgment.

On appeal, Gibson contests this ruling, which we review de novo. *See Hunter v. Mueske*, 73 F.4th 561, 565 (7th Cir. 2023). To create a triable claim under the Eighth Amendment for failure to protect, Gibson had to marshal sufficient evidence from which a reasonable jury could find that (1) he was exposed to an “excessive” risk of harm that actually materialized; (2) the defendants had actual knowledge of that risk; and (3) the defendants’ response was so inadequate as to constitute deliberate indifference toward the risk. *Id.*

Although Gibson contends that the district court overlooked evidence establishing that Fox and Grove had actual knowledge of the risk that Gibson would be attacked, it is not necessary to address that element of the claim. Even if Fox and Grove knew that Gibson faced an excessive risk of harm, no reasonable jury could find that they were deliberately indifferent to that risk.

Failure to protect a prisoner from a known risk of harm constitutes an Eighth Amendment violation only if the defendants act with deliberate indifference—“something approaching a total unconcern for inmate safety.” *Id.* at 566. Here, however, the undisputed evidence shows that the defendants took measures “reasonably calculated” to address the risk Gibson faced, even though those actions ultimately did not prevent his injury. *Id.* Within hours of Gibson informing them of his concerns, the defendants sought authorization to move Gibson to the housing unit he requested and followed up with him later that afternoon to convey their belief (based on what, we do not know) that he would be moved “within the hour.”

Gibson counters that the defendants’ actions were callously inadequate, not reasonable, because they left the prison before ensuring he was moved or otherwise protected. In support, he points to expert testimony submitted in another of Gibson’s

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lawsuits that suggests that prison officials should order alternative housing or protective custody whenever an inmate faces a credible threat. But Gibson produced no evidence that Fox and Grove could move him to Unit I, and they cannot be liable for failing to do something they had no authority to do. *See id.* Further, Gibson does not contend that Fox and Grove were the only staff members who were aware of the threat; indeed, he asserts that other staff members knew, too. Therefore, it was reasonable for Fox and Grove to do what they could: convey Gibson's request to a person with the authority to change his housing unit. His testimony suggests that they promptly asked for his move to Unit I and believed the move was in the works when they left; therefore, Gibson would be unable to prove at a trial that they had a culpable state of mind.

In his reply brief, Gibson suggests alternative actions that Fox and Grove could have taken to assure his safety, such as placing him in segregation, locking him in his cell, or telling supervisors of the threat. But arguments raised for the first time in a reply brief are waived. *White v. United States*, 8 F.4th 547, 552–53 (7th Cir. 2021).

AFFIRMED