

JUDGE MAY DISMISS CHARGES AGAINST GUARDS; PROSECUTION RESTS INMATE DOESN'T TESTIFY

JUDGE MAY DISMISS CHARGES AGAINST GUARDS; PROSECUTION RESTS INMATE DOESN'T TESTIFY

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Byline: GARY L. WRIGHT, STAFF WRITER

Body

Two guards accused of beating an inmate at the Mecklenburg County jail may go free today.

U.S. Chief District Court Judge Graham Mullen will decide this morning whether to dismiss the charges against Capt. Rodney Collins and former Sgt. Paul Gee.

Lawyers for the sheriff's deputies urged Mullen to dismiss the charges after prosecutors rested their case Tuesday. Collins and Gee are accused of beating Paul Dameron Midgett and violating the inmate's civil rights in May 2000.

Mullen said he would think about it overnight and announce his decision this morning.

The defense lawyers argued that prosecutors had failed to prove that Collins and Gee intended to violate Midgett's civil rights. They also questioned why prosecutors did not put Midgett on the witness stand to testify about the confrontation.

"The government's failure to call Mr. Midgett is a fatal vacuum in the evidence of this case," defense lawyer James Wyatt told the judge. "We are surprised at the lack of evidence the government put forth."

But Kristy Parker, a prosecutor with the U.S. Justice Department's civil rights division, told the judge there was plenty of evidence that Collins and Gee had used unconstitutional force in the confrontation with Midgett, 44.

Collins, 37, who has been on administrative leave since his indictment, faces charges that carry maximum punishments of 20 years in prison. Gee, 36, who no longer works at the sheriff's office, faces a charge punishable by up to 10 years.

During Tuesday's civil rights trial at the federal courthouse in Charlotte, two jail detention officers and an inmate testified that they saw Collins and Gee beating Midgett.

Detention officer Aerris Smith told jurors that the confrontation erupted after he told Midgett to go back to his cell and the inmate grabbed him.

But Smith said he and another guard had already taken Midgett down and had him under control when Collins and Gee intervened and began beating him.

JUDGE MAY DISMISS CHARGES AGAINST GUARDS; PROSECUTION RESTS IN MATE DOESN'T TESTIFY

Defense lawyers had told jurors that Midgett had grabbed Gee's leg and that the deputies had acted with reasonable and necessary force.

But Smith said he never saw Midgett grab Gee's leg or strike out at the deputies.

"They started hitting on him and kicking him," Smith recalled. "They were pretty hard kicks and punches. He was lying in a pool of blood around his body."

Aaron Little, a former jail inmate who is now in a state prison, told jurors that he saw Collins and Gee punching, stomping and kicking Midgett.

But defense lawyers attacked the credibility of the prosecution witnesses.

"You're just making this up as you go along, aren't you?" defense attorney Lyle Yurko told one of the guards who testified that Collins and Gee had beaten Midgett.

The defense portrayed Smith as a liar who didn't want to get in trouble for his role in subduing Midgett. The defense lawyers also questioned Smith about why he never told investigators in the days following the confrontation that Collins and Gee, his supervisors, had beaten Midgett.

"It's not good to snitch on a supervisor," Smith said. "I didn't want to be the one to bring them down."

Yurko's cross-examination of Smith ended with this exchange:

"You'll say whatever it takes to avoid going to prison, won't you?" Yurko asked.

"I'll tell the truth," Smith replied.

"I bet you will," the defense lawyer shot back.

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JUDGE THROWS OUT BEATING CASE;FEDERAL PROSECUTORS CHARGED DEPUTIES WITH CIVIL RIGHTS VIOLATIONS

**JUDGE THROWS OUT BEATING CASE;
FEDERAL PROSECUTORS CHARGED DEPUTIES WITH CIVIL RIGHTS
VIOLATIONS**

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Body

A federal judge on Wednesday threw out the charges against two guards accused of beating an inmate at the Mecklenburg County jail four years ago.

U.S. Chief District Judge Graham Mullen ruled that prosecutors had failed to prove that Capt. Rodney Collins and former Sgt. Paul Gee intended to violate the civil rights of Paul Dameron Midgett.

The judge said Midgett's injuries were relatively minor and inconsistent with evidence offered by the government that the inmate had been brutally beaten.

Mullen also said the prosecutors' failure to put Midgett on the witness stand during this week's trial created a vacuum in the government's case.

"It was a difficult decision," Mullen told the Observer, "but one I felt I had to make because of the evidence - or the lack of evidence."

Mecklenburg Sheriff Jim Pendergraph, who has repeatedly defended his deputies, accused the U.S. Justice Department of trying to make an example of him and his office.

"This was a witch hunt," the sheriff said. "The Justice Department should have never brought these charges. My officers didn't do anything wrong."

Prosecutors accused the deputies of using excessive force to subdue Midgett after a confrontation erupted between him and guards. The defense argued that the deputies used reasonable force to get Midgett under control.

Collins and Gee hugged their lawyers upon learning that they would go free. Lou Anne Heath, a paralegal on the defense team, shed tears of relief.

Moments later outside the courthouse, Collins told one of the defense lawyers: "Thanks. You did a great job."

"The government's case was too thin," defense attorney Lyle Yurko told reporters. "The fact that they didn't put the so-called victim on the stand gave the judge no choice but to grant our motion for acquittal."

JUDGE THROWS OUT BEATING CASE;FEDERAL PROSECUTORS CHARGED DEPUTIES WITH CIVIL RIGHTS VIOLATIONS

Defense attorney James Wyatt said the prosecution's evidence crumbled during the trial.

"These officers did nothing more than subdue an extremely violent and dangerous inmate," Wyatt said.

"They were relieved at the judge's ruling. Both these men had to live with these charges hanging over their heads for 13 months."

Wyatt said he spoke to jurors as they left the courthouse. Those jurors, he said, told him they would have acquitted the deputies.

"They said the stories of the government's witnesses were not believable and didn't make sense," the defense lawyer said.

George and Loretta Midgett attended the trial hoping that the deputies accused of beating their son would be punished.

"We certainly don't agree with the judge's decision," George Midgett, 80, said. "We consider it a miscarriage of justice. A terrible thing happened to our son. The jurors should have had a chance to listen to all the evidence and make their own decision."

George Midgett said he regrets that his son wasn't allowed to testify about what happened to him at the jail.

"Our son wanted to testify. He should have. But that was not within our control or his."

Prosecutors told the judge during the trial they didn't plan to call Midgett as a witness. They didn't say why. But one of the prosecutors told jurors at the beginning of the trial that Midgett was a violent criminal who might spend the rest of his life in prison.

Midgett is one of six inmates who have filed civil suits in federal court claiming guards at the Mecklenburg jail used excessive force against them. Four of the lawsuits, including Midgett's, are pending. One was thrown out. In the other, a jury ruled last year that the inmate hadn't been beaten.

In August 2003, a state jury in Charlotte awarded \$49,500 to a former inmate who claimed he'd been beaten at the Mecklenburg jail. The jurors, after viewing a videotape of the violent confrontation, ruled that a sheriff's deputy had assaulted the inmate.

The following month, a federal grand jury in Charlotte indicted Collins and Gee, accusing them of beating and kicking Midgett at the jail in May 2000.

Midgett, 44, was convicted in June on federal bank robbery and assault charges and has been in the federal prison in Atlanta while awaiting sentencing. He is facing a life sentence.

Asheville lawyer Charles Brewer, who represents Midgett in the civil lawsuit and defended him on the criminal charges, expressed disappointment at Wednesday's dismissal of the charges against the deputies.

But Brewer, a former U.S. attorney for Charlotte and the Western District of North Carolina, praised the FBI and Justice Department for bringing what he described as a serious problem to the public's attention.

"They could have turned a blind eye to it," Brewer said. "But they didn't. They didn't sweep it under the rug."

Collins, 37, has been on administrative leave since the indictment. The charges he faced are punishable by up to 20 years in prison. Gee, 36, no longer works at the Sheriff's Office, though Pendergraph said his departure was not related to the indictment or any other incident involving an inmate. He faced up to 10 years imprisonment.

The violent confrontation, prosecutors told jurors, erupted when Midgett, who had been complaining about not getting his medication, grabbed a guard after being ordered back to his cell.

JUDGE THROWS OUT BEATING CASE;FEDERAL PROSECUTORS CHARGED DEPUTIES WITH CIVIL RIGHTS VIOLATIONS

Two jail guards, testifying for the prosecution, told jurors that Collins and **Gee** kicked and hit Midgett repeatedly. An inmate who witnessed the confrontation told jurors that the deputies were trying to hurt Midgett.

But defense lawyers attacked the prosecution witnesses' credibility, portraying the jail guards as liars because they never told investigators in the days after the confrontation that Collins and **Gee** beat Midgett.

Pendergraph arrived at the courthouse Wednesday minutes after the judge's ruling.

The sheriff walked up to Collins, shook his hand and asked: "Can you come back to work this afternoon?"

"I am gratified the judge was able to see through this and dismiss the charges," Pendergraph told reporters.

The sheriff said an internal investigation into the confrontation uncovered no wrongdoing.

"My officers did not beat him," Pendergraph said. "He was out of control. He has a history of violent behavior."

Graphic

PHOTO:2;

1.-2. Paul Dameron Midgett

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CIVIL RIGHTS TRIAL TO BEGIN; MECKLENBURG SHERIFF'S CAPTAIN, EX-SERGEANT IN COURT
MONDAY, ACCUSED OF BEATING INMATE

CIVIL RIGHTS TRIAL TO BEGIN; MECKLENBURG SHERIFF'S CAPTAIN, EX-SERGEANT IN COURT MONDAY, ACCUSED OF BEATING INMATE

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Body

A Mecklenburg sheriff's captain and a former sergeant accused of beating an inmate at the jail go on trial Monday in federal court in Charlotte.

Capt. Rodney Collins and former Sgt. Paul Gee are accused of violating the civil rights of former inmate Paul Dameron Midgett in May 2000 at the Mecklenburg County jail.

The indictment accuses Collins and Gee of striking, kicking and beating Midgett.

Collins, 37, and Gee, 36, deny the allegations.

"My client is simply not guilty of this charge," said defense lawyer James Wyatt, who represents Gee. "In accordance with his training, he took appropriate steps to subdue an extremely violent inmate."

Midgett, 44, is one of six inmates who have filed civil lawsuits in federal court accusing deputies and detention officers of using excessive force against them at the jail. Four of the lawsuits, including Midgett's, remain pending. One of them was thrown out.

In March, a federal jury rejected the claims of former jail inmate Jerry Philip Ritchie Jr. that he'd been falsely arrested and beaten.

In August 2003, a former jail inmate who claimed he'd been beaten in 1997 won a jury verdict in state court in Charlotte. The jury, after viewing a videotape of a violent confrontation between sheriff's deputies and the inmate, ruled that a deputy had assaulted Stacy Cunningham. The jurors awarded Cunningham \$49,500.

Mecklenburg Sheriff Jim Pendergraph and his officers have denied the jail beating allegations.

But in September 2003, a federal grand jury in Charlotte indicted Collins and Gee and accused them of beating Midgett.

At a news conference following his officers' indictment, Pendergraph rattled off Midgett's lengthy record, describing him as a "career criminal" who wrapped himself around a deputy's leg and wouldn't let go

CIVIL RIGHTS TRIAL TO BEGIN; MECKLENBURG SHERIFF'S CAPTAIN, EX-SERGEANT IN COURT
MONDAY, ACCUSED OF BEATING INMATE

"We're not dealing with people who obey orders and obey directions," the sheriff said.

Collins, who has been on administrative leave since the indictment, faces charges that carry maximum punishments totaling 20 years in prison.

The charge Gee faces is punishable by up to 10 years imprisonment. Gee left the Sheriff's Office about two years ago. Pendergraph said state personnel laws prohibit him from talking about why Gee left, but that it was not related to allegations in the indictment or to any other incident involving an inmate.

Midgett's lawsuit claims he was brutally beaten by deputies and detention officers while he was in jail awaiting trial on federal charges of bank robbery and assault.

Midgett, who suffers from epileptic seizures, claims the beating occurred after he filed a grievance form against an officer when he wasn't given his medication.

Midgett said his hands were cuffed behind his back and he was picked up by his collar and feet, held about four feet off the floor and dropped.

He alleges that officers, clad in military-style combat boots, began stomping on him. When a nurse arrived, Midgett was lying in a pool of blood, according to court documents. His glasses were shattered on the floor.

Midgett claims his collarbone was broken and he received stitches to his forehead.

Kristy Parker, an attorney with the U.S. Justice Department, is prosecuting Collins and Gee. She couldn't be reached for comment.

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