

4-3-2014

## Summary of Angel v. Cruse, 130 Nev. Adv. Op. 25

Kelsey Bernstein  
*Nevada Law Journal*

Follow this and additional works at: <http://scholars.law.unlv.edu/nvscs>

 Part of the [Constitutional Law Commons](#)

---

### Recommended Citation

Bernstein, Kelsey, "Summary of Angel v. Cruse, 130 Nev. Adv. Op. 25" (2014). *Nevada Supreme Court Summaries*. Paper 2.  
<http://scholars.law.unlv.edu/nvscs/2>

This Case Summary is brought to you by Scholarly Commons @ UNLV Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact [david.mcclure@unlv.edu](mailto:david.mcclure@unlv.edu).

CONSTITUTIONAL LAW: FIRST AMENDMENT

**Summary**

The Court determined (1) whether the district court properly granted summary judgment in a complaint alleging unconstitutional retaliation in violation of the inmate's First Amendment rights, and (2) whether the proper test to determine whether retaliatory actions "chill" protected First Amendment speech is objective or subjective.

**Disposition**

The lower court incorrectly granted summary judgment because it did not construe the facts in the light most favorable to the non-moving party. Genuine issues of material facts existed as to whether a prison guard disciplining an inmate while the inmate is engaged in the grievance process constitutes retaliation and whether the guard was entitled to qualified immunity. Furthermore, the lower court incorrectly applied a subjective test in determining whether the guard's actions can have a "chilling effect" on the inmate's First Amendment rights; the correct test to apply when determining a chilling effect is objective.

**Factual and Procedural History**

Appellant Randal George Angel, a prison inmate, filed a civil rights complaint against corrections officer Michael Cruse. The complaint alleged Cruse violated Angel's First Amendment rights by placing Angel in administrative segregation in retaliation for attempting to file a grievance against Cruse. Angel stated in an affidavit that Cruse approached him as Angel was filling out a grievance and asked him what he was doing. Angel maintains that he responded to Cruse, "you violated my constitutional right and I'm going to make you pay for it." However, Cruse maintains that Angel responded, "I'll get you, believe me, you're going to get yours." After the exchange, Cruse stopped Angel from completing the grievance, handcuffed him, charged him with threatening Cruse and placed him in administrative segregation. After being placed in segregation, Angel continued to file grievances related to this and other incidents.

Cruse filed a motion for summary judgment to dismiss Angel's complaint. In his motion, Cruse argues three primary points. First, that disciplining Angel was carried out in response to Angel's threat and not because Angel was attempting to file a grievance against him. Accordingly, he contended, the discipline advanced the legitimate correctional goal of institutional security. Second, he argued Angel's First Amendment rights were not chilled, as evidenced by Angel continuing to file grievances after the disciplinary action. Third, Cruse argued, in the alternative, that he was entitled to qualified immunity because he could not have known that the adverse action violated Angel's constitutional rights. Angel submitted an affidavit in opposition to the motion, citing his version of events and arguing that Cruse's conduct was retaliation for the grievance. The district court granted summary judgment to Cruse on both the retaliation and qualified immunity claims.

---

<sup>1</sup> By Kelsey Bernstein.

## Discussion

### *Retaliation*

An inmate alleging retaliation for the exercise of his First Amendment rights must demonstrate that: (1) the inmate was engaged in protected conduct; (2) the correctional officer took adverse action against the inmate; (3) the adverse action was taken because of the inmate's protected conduct; (4) the adverse action had a chilling effect on the protected conduct; and (5) the adverse action did not reasonably advance a legitimate correctional goal. The first two elements were not in dispute.

### *Whether the action was taken because of Angel's protected conduct*

To survive summary judgment, Angel must show that his protected conduct was a substantial or motivating factor behind the guard's conduct.<sup>2</sup> The timing of a punishment may be circumstantial evidence of motivation.<sup>3</sup> The Court held that the district court erred by accepting Cruse's version of events and not evaluating the summary judgment motion in the light most favorable to Angel, the non-moving party.<sup>4</sup> Construing the evidence in favor of Angel, the Court determined that a reasonable jury could conclude that Cruse's actions were a response to Angel filing a grievance against Cruse rather than a response to a security threat. Because Angel's version of the statement only communicated an intent to pursue a grievance, a protected activity, and because Cruse took the disciplinary action while Angel was actually in the process of filling out the grievance, genuine issues of material fact remain as to whether the discipline was taken against Angel because of his exercise of protected conduct.

### *Whether the action advanced a legitimate correctional goal*

The Court next noted that because a jury could reasonably conclude that Cruse took adverse action against Angel because Angel was exercising his right to file a grievance, discussed above, then it would follow that the discipline was not taken in response to a security threat. Therefore, an issue of material fact also remains as to whether Cruse's actions served a legitimate correctional goal.

### *Chilling effect*

Due to the inherent difficulties of using a subjective standard to evaluate a chilling effect on a particular inmate, the Ninth Circuit adopted an objective standard. The proper question, therefore, was not whether Angel was chilled from filing grievances, but rather whether the adverse action "would chill or silence a person of ordinary firmness from future First Amendment activities."<sup>5</sup> Because the district court applied the subjective standard, holding that Angel himself was not chilled because he continued to file grievances after the disciplinary

---

<sup>2</sup> Brodheim v. Cry, 584 F.3d 1262, 1271 (9th Cir. 2009).

<sup>3</sup> Bruce v. Ylst, 351 F.3d 1283, 1288 (9th Cir. 2003).

<sup>4</sup> Angel submitted his own affidavit to oppose the summary judgment motion.

<sup>5</sup> Rhodes v. Robinson, 408 F.3d 559, 568 (9th Cir. 2004).

action, and because Cruse did not present any evidence to show that Angel did not meet this objective standard, the grant of summary judgment was improper.

### *Qualified immunity*

Qualified immunity does not extend to retaliatory punishment in violation of “clearly established law.” The Court noted that the district court’s based its decision that Cruse was entitled to qualified immunity on its assumption that he took the disciplinary action in response to a threat—an assumption the Court determined was improper under the summary judgment standard. Therefore, the Court observed, the genuine issues of material fact that remained in evaluating this assumption also created genuine issues of material fact on the qualified immunity claim.

### **Conclusion**

The district court erred by not evaluating the summary judgment motion in a light most favorable to the non-moving party. Genuine issues of material fact remain for each disputed element in the retaliation claim. Issues of material fact also remain on the qualified immunity claim pending a factual resolution of the retaliation claims given the limitations of qualified immunity’s protection for retaliatory punishment.

When determining the chilling effect of an adverse action, the correct test is objective “person of ordinary firmness” test.

The Court reversed and remanded the matter to the district court for further proceedings.