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# The Duty to Intervene is Now Clearly Established as a Fourth Amendment Violation

*Nute v. White* No. 23-10273  
(11th Cir. Sept. 16, 2025)

The United States Court of Appeals for the Eleventh Circuit recently decided an important case regarding a police officer's responsibility to intervene in an incident. In *Nute v. White*, the plaintiff was arrested by officers for misdemeanor assault, public intoxication, and resisting arrest. Officer White transported the plaintiff to the county jail. While at the county jail, during the booking processing, the jailers became frustrated with the plaintiff and struck him multiple times, including with punches and open-hand blows. Officer White was present during this time but took no action.

Officer White then departed from the booking room, and the ongoing assault by the jailers against the plaintiff continued for at least six more minutes, during which the plaintiff was repeatedly punched, kicked, kneed, pepper-sprayed, and tased. The

jailers were criminally prosecuted and convicted for their misconduct.

Thereafter, the plaintiff sued Officer White, claiming that Officer White violated his Fourth Amendment rights by failing to intervene when the jailers assaulted him at the county jail. The trial court found that Officer White was not entitled to qualified immunity, and Officer White appealed.

The appeals court also found that Officer White was not entitled to qualified immunity. The court ruled that the law was clearly established that an officer has a duty to intervene when he witnesses three jailers beating and otherwise physically abusing a non-resisting individual in that officer's presence. The court further concluded that it is a Fourth Amendment violation if the officer remains silent and leaves the scene of the assault while it is still ongoing. The court last ruled that it did not legally matter that Officer White had no supervisory or other authority over the jailers. Instead, the court held that an officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer's use of excessive force can still be legally responsible.

This case is important, as it confirms that an officer has a duty to intervene, in some way, if he or she witnesses an incident involving another law-enforcement agent that is constitutionally unsound. If the officer does not intervene, the officer's failure to take any action could itself be construed as a constitutional violation.

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