

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

LARRY GEORGE,

Plaintiff,

v.

RUTH TRITT and OFFICER VILSKI,

Defendants.

OPINION AND
ORDER

05-C-0403-C

This is a civil action for injunctive and monetary relief, brought pursuant to 42 U.S.C. § 1983. Plaintiff, who is a prisoner at the Oshkosh Correctional Institution, contends that defendants Laura Vilski and Ruth Tritt violated his First Amendment rights when defendant Vilski denied delivery of the July 2003 issue of FHM and defendant Tritt denied delivery of the June 2003 issue of Rolling Stone. Defendants contend that they denied delivery of both magazines because they contained depictions of gang-signing. Publications that contain depictions of gang-signs and gang-signing are prohibited within the Oshkosh Correctional Institution.

Currently before the court is defendants' motion for summary judgment, which I

granted in part and stayed in part on December 22, 2006. I stayed a decision on defendants' motion for summary judgment to allow defendants to submit copies of the allegedly offending magazine pages for an *in camera* review, which had not been included with defendants' original motion. Pursuant to that order, defendants have now provided the court with the necessary copies for review. From an *in camera* review of the materials, I have determined that defendants acted within their discretion in concluding that the publications "advocate[d] . . . behavior consistent with a gang" and fell into the category of publications prohibited by Wis. Admin. Code § DOC 309.04(4)(c)(10). Therefore, defendants' motion for summary judgment will be granted.

Before reaching the merits of the remainder of defendants' motion for summary judgment, I wish to emphasize again the severe disadvantage defendants in cases such as this will face if a record of print materials disallowed into the prison is not maintained and readily accessible in the event the disallowance is challenged in litigation. I commend the office of the Attorney General for obtaining the missing copies as quickly as it did. However, it should not have been necessary for the court to delay a final decision in this action so as to allow extended efforts to obtain the copies. Even with the deference required to be afforded prison officials in administering day-to-day life in Wisconsin's prisons, this court cannot make a reasoned decision whether print material was rightfully or wrongfully withheld on the basis of contemporaneous notations made by mail room officers or gang

coordinators or on the basis of affidavits containing officers' recollection of the material. Although this court would prefer not to serve as a simple reviewing authority for disallowed publications and other print materials, it cannot shirk its responsibility to insure that prisoners are afforded the rights they still have under the First Amendment. This can be accomplished only by *in camera* review of the rejected materials.

This court's orders of December 7, 2006 and December 22, 2006 set forth in detail the previously determined undisputed and material facts of this case; I will not restate those facts here. From an *in camera* review, I have found that the cover page and page 92 of the June 2003 issue of Rolling Stone and page 92 of the July 2003 issue of FHM contain photographs of people making hand gestures.

OPINION

This case has been narrowed and now poses a single question: did defendants Tritt and Vilski properly withhold plaintiff's copies of the June 2003 issue of Rolling Stone and the July 2003 issue of FHM? In previous decisions, this court and the Court of Appeals for the Seventh Circuit have upheld the administrative regulations that defendants assert that they applied in reaching their decisions to withhold the magazines. Therefore, the only remaining question is whether this determination was reasonable.

Within prisons, gangs pose a significant security threat which prison officials seek to

contain and eliminate. Rios v. Lane, 812 F.2d 1032, 1037 (7th Cir. 1987). Gangs may attempt to communicate covertly within a prison through signs and symbols. These signs and symbols are not static; prison officials learn to recognize them through their daily interaction with and observation of prisoners. Koutnik v. Brown, 456 F.3d 777, 785 (2006). Not surprisingly, prison officials are afforded significant deference regarding determinations that materials intended for prisoners contain gang-symbols. Id. The rule is sensible. By their nature, courts do not have the same experience as prison officials and are ill-prepared to state with authority whether a particular hand gesture is or is not a gang-sign. Thus, my review of the photographs in question is not searching. I have found that the June 2003 issue of Rolling Stone and the July 2003 issue of FHM contain photographs of people (including Snoop Dogg) making hand gestures. It was neither arbitrary nor irrational for defendants to conclude that the photographs contain gang-related hand signs. Defendants acted within their discretion in concluding that this publication “advocate[d] . . . behavior consistent with a gang” and is prohibited by Wis. Admin. Code § DOC 309.04(4)(c)(10). Therefore, defendants’ motion for summary judgment will be granted.

ORDER

IT IS ORDERED that the motion of summary judgment of defendants Ruth Tritt and Laura Vilski is GRANTED with respect to plaintiff’s claims that defendant Vilski wrongfully

denied delivery of the July 2003 issue of FHM and defendant Tritt wrongfully denied delivery of the June 2003 issue of Rolling Stone, in violation of his First Amendment rights. The clerk of court is directed to enter judgment in favor of defendants and close the case.

Entered this 10th day of January, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge