

Hamen v. Hamlin County

On June 9, 2016, officers searched for Gary Hamen who had five warrants for his arrest. Around 11:30 a.m., Hamlin County Sheriff Chad Schlotterbeck and Watertown Police Department Detective Chad Stahl met with Gary's father, Gareth Hamen, at his residence. The officers asked whether Gary owned guns and Gareth told the officers Gary did own a few guns. During the visit, Gary called Gareth and asked to be picked up because the police were looking for him. Gary said he needed a car to go to Canada or Mexico. Gareth asked where Gary was, and Gary said he was at the mobile home owned by Gareth and Sharla Hamen. The mobile home was located approximately 600 feet to the northwest of Gareth's house. Gary was allowed to live in the mobile home during times when he was not working.

Following the meeting at Gareth's home, the officers went about half a mile southwest from the mobile home. From this location, the officers saw Gary leave the mobile home and go back inside. Sheriff Schlotterbeck requested help from the Watertown Police Department SWAT Team to get Gary to surrender from the mobile home.

Officers from the Watertown Police Department set up a loose perimeter around the mobile home, but were unable to watch all four sides. A drone surveyed the mobile home and surrounding areas for signs of Gary. Sergeant Kirk Ellis of the Watertown Police Department parked an armored vehicle about 40 yards from the mobile home and used a PA system to contact Gary. Officers received no response.

While attempting to make contact with Gary, officers were advised that a witness saw Gary running towards Castlewood. The witness said that Gary came out of a tree line near the river, but ran back into the trees. Another witness told officers that he believed he saw Gary near the river. An officer inside the armored vehicle called Gary's cellphone and Gary answered. Gary sounded out of breath, like he was running, and claimed he was almost to Minnesota.

Meanwhile, Sheriff Schlotterbeck was parked at a nearby intersection speaking with Tim Hofwalt, Gary's brother-in-law. Tim was married to Gary's sister Julie Hofwalt, and their home was within view of the mobile home. Tim told Sheriff Schlotterbeck that Gary was at his home the previous night and Gary had at least one gun. Sheriff Schlotterbeck dispatched the information from Tim to all involved law enforcement officers. He then requested aid from the Codington County SWAT Team and Highway Patrol to further secure the area to ensure Gary did not make it to Castlewood.

Sheriff Schlotterbeck then briefed Codington County Sheriff Toby Wishard that Gary was last seen near the water west of Castlewood. The Codington County Special Response Team brought a second armored vehicle to clear the shelterbelt in search of Gary. The Special Response Team found a bag belonging to Gary containing a cellphone and an empty gun case. Believing Gary was armed, Sheriff

Schlotterbeck and Sheriff Wishard agreed the mobile home would need to be cleared.

Sheriff Wishard and the Special Response team first went to Julie and Tim's residence. Officers searched the house and farm, with the exception of one padlocked out building. Julie told officers that Gary was likely hiding in the willows west of Gareth's mobile home. After searching the farm, officers told Gareth they would clear the mobile home.

During this time, Troy Jurrens, a former marine who runs a business from his home, was listening to the transmissions by radio between the various law enforcement agencies. He alleges that just before the armored vehicles damaged the mobile home, someone announced that the officers were returning to the mobile home. Another person responded that Gary was not in the mobile home and the first voice said, that officers were going back anyway. Tim also contends that he heard a radio transmission saying the mobile home was clear and Gary was seen running towards the river.

According to Sheriff Wishard, to secure the mobile home, officers needed to create a communication porthole to call out Gary from inside. To create the communication porthole, the Watertown armed vehicle pulled away the front stairs and deck, which were not attached to the house or secured in the ground. The Watertown vehicle then pushed in the front door with a ram. The Codington County vehicle opened three portholes on the opposite side of the mobile home through windows and a sliding patio door. Drone footage captured this procedure. While the officers called out for Gary to exit the mobile home, the drone raised its vantage point. The drone captured someone walking in the river near the Hamen residence; this was Gary. Officers apprehended Gary around 6:00 p.m.

The Hamens claim that the mobile home was extensively damaged in addition to the removed doors and windows. The deck stairway was destroyed and the deck damaged. The wall and frame near the main doorway was damaged, and the mobile home knocked from its foundation on the south end. Further, one of the armored vehicles drove over the septic tank, crushing it. In sum, the Hamens claim an estimated \$18,778.61 in damage to the mobile home.

On January 30, 2017, the Hamens filed a complaint against Hamlin County, Sheriff Schlotterbeck, and Unnamed Sheriff's Deputies claiming a cause of action for inverse condemnation under the South Dakota Constitution and a 42 U.S.C. § 1983 cause of action for deprivation of constitutional rights under the Fourth and Fourteenth Amendments of the U.S. Constitution.

Hamlin County and Sheriff Schlotterbeck moved for summary judgment on both claims. The Hamens filed a cross-motion for summary judgment. The circuit court held a hearing on the motions and issued its decision June 29, 2018. The circuit court denied the summary judgment motions as to all parties except Hamlin County. The court held that material issues of fact existed and it was improper for the court to rule on the inverse condemnation or § 1983 claim. The court held there

was nothing in the record to prove an official policy or custom that Hamlin County approved or condoned the damage to the mobile home.

Hamlin County and Sheriff Schlotterbeck petitioned for discretionary appeal. Appellants raise two issues:

1. Whether the damage to the Hamens' mobile home during the arrest of Gary Hamen is a compensable taking or the result of an exercise of police power.
2. Whether Sheriff Schlotterbeck is entitled to qualified immunity.

Mr. James Moore, Mr. Joel Engel III, Attorneys for Appellants Hamlin County and Chad Schlotterbeck.

Mr. David Strait, Attorney for Appellees Gareth and Sharla Hamen.