

Court of Claims of Ohio

The Ohio Judicial Center
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Columbus, OH 43215
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LAMOND JOHNSON

Plaintiff

v.

SOUTHERN OHIO CORRECTIONAL FACILITY

Defendant

Case No. 2007-01029

Judge J. Craig Wright
Magistrate Steven A. Larson

MAGISTRATE DECISION

{¶ 1} Plaintiff brought this action alleging that an employee of defendant used excessive force against him. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶ 2} At all times relevant, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. Plaintiff alleges that on June 28, 2006, he and Corrections Sergeant Preston Messer had a confrontation that started as a verbal disagreement and ended with Messer slamming plaintiff's head into a wall. According to plaintiff, as a result of the incident, he was charged with "physical disobedience of a direct order" and he was required to appear before defendant's Rules Infraction Board (RIB) for a hearing on the charge. Plaintiff testified that the RIB found him not guilty of the charge. Plaintiff asserts that the RIB finding establishes that Messer was without justification to use force against him.

{¶ 3} The Ohio Administrative Code sets forth the circumstances under which force may be lawfully utilized by prison officials and employees in controlling inmates. Ohio Adm.Code 5120-9-01(C) provides, in relevant part:

{¶ 4} “(2) Less-than-deadly force. There are six general circumstances in which a staff member may use force against an inmate or third person. A staff member may use less-than-deadly force against an inmate in the following circumstances:

{¶ 5} “(a) Self-defense from physical attack or threat of physical harm;

{¶ 6} “(b) Defense of another from physical attack or threat of physical attack;

{¶ 7} “(c) When necessary to control or subdue an inmate who refuses to obey prison rules, regulations or orders;

{¶ 8} “(d) When necessary to stop an inmate from destroying property or engaging in a riot or other disturbance;

{¶ 9} “(e) Prevention of an escape or apprehension of an escapee; or

{¶ 10} “(f) Controlling or subduing an inmate in order to stop or prevent self-inflicted harm.”

{¶ 11} The court has recognized that “corrections officers have a privilege to use force upon inmates under certain conditions. * * * However, such force must be used in the performance of official duties and cannot exceed the amount of force which is reasonably necessary under the circumstances. * * * Obviously, ‘the use of force is a reality of prison life’ and the precise degree of force required to respond to a given situation requires an exercise of discretion by the corrections officer.” *Mason v. Ohio Dept. of Rehab. & Corr.* (1990), 62 Ohio Misc.2d 96, 101-102. (Internal citations omitted.)

{¶ 12} Messer testified that on the day of the incident he was “making rounds” in plaintiff’s cell block when a female corrections officer approached him and reported that she observed plaintiff masturbating in his cell. Based upon this information, Messer went to plaintiff’s cell to issue him a “ticket” and place him in segregation. Messer

testified that he handcuffed plaintiff and removed him from his cell without much incident, but that while he was escorting him to the segregation block, plaintiff called him a “little bitch motherfucker” and said that he was “going to kick his ass.” Messer stated that he responded by giving plaintiff a direct order to stop being disrespectful. According to Messer, after he issued the order, plaintiff took a few steps turned toward him in an aggressive manner, and stated “I’m going to fuck you up.” Messer testified that at this point he “placed” plaintiff on the wall and told him to calm down or additional force would be used. According to Messer, plaintiff complied with the order and the two men continued to the segregation block without incident.

{¶ 13} Chris McCane was a unit manager for defendant at the time of the incident and served as chair of the three-member Use-of-Force Committee (Committee) that investigated the incident. McCane testified that during the investigation the Committee interviewed the parties involved and reviewed the medical exam report for plaintiff from the incident (Defendant’s Exhibit E), the incident report filed by Messer (Defendant’s Exhibit A), and a conduct report issued to plaintiff following the incident (Defendant’s Exhibit B). The Committee found that “this was a reactive situation requiring an immediate response” by Messer and that he had “used the minimal amount of force to overcome the resistance” by plaintiff. The Committee concluded that there was “no evidence that excessive force was used” and that the “force was justified.” (Defendant’s Exhibit D, Page 2.) The Committee further found that even though plaintiff later reported being injured by Messer, soon after the incident he informed a nurse that he was not injured and the nurse noted that there was “no obvious trauma” to plaintiff. (Defendant’s Exhibit D, Page 2.)

{¶ 14} Based upon the foregoing, the court finds that Messer and McCane were more credible than plaintiff. The court concludes that Messer used appropriate force at all times during the confrontation inasmuch as he was protecting himself and attempting both to subdue plaintiff and to obtain his compliance. Accordingly, judgment is recommended in favor of defendant.

A party may file written objections to the magistrate’s decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections

are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).

STEVEN A. LARSON
Magistrate

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Magistrate Steven A. Larson

MR/cmd
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