

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

JAMES COLLINS

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2004-04370

Judge J. Craig Wright
Magistrate Steven A. Larson

MAGISTRATE DECISION

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

{¶ 2} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant at the Southern Ohio Correctional Facility (SOCF) pursuant to R.C. 5120.16. Plaintiff alleges that employees at SOCF used excessive force against him on October 19, 2003, October 30, 2003, and April 19, 2004, and that he was injured as a result.

{¶ 3} At trial, plaintiff also asserted that excessive use of force was used against him on June 30, 2004, and “June 31, 2004.” Defendant objected to any testimony related to those alleged incidents inasmuch as they were not referenced in plaintiff’s

complaint.¹ Upon consideration, any testimony and evidence relating to those incidents will not be considered by the court.

USE-OF-FORCE INCIDENTS

{¶ 4} October 19, 2003 - Plaintiff testified that on October 19, 2003, Corrections Officer (CO) Preston Messer came to his cell and asked him if he wanted a haircut. Plaintiff stated that he told Messer that he did not wish to have his hair cut at that time. According to plaintiff, Messer then called Sergeant David McCroskey to plaintiff's cell. Plaintiff testified that he threw a shampoo bottle full of either water or shampoo at Sergeant McCroskey and at least one bar of soap at Messer. Plaintiff further testified that Sergeant McCroskey was "blowing kisses" at him so plaintiff attempted to "punch him in his face." According to plaintiff he was then sprayed with mace "head to toe" by Sergeant McCroskey. Plaintiff testified that he was then removed from his cell and placed in a segregation unit "slammer cell" where he remained for 30 days. Plaintiff stated that he was evaluated by a mental health nurse the day of the incident and examined by "medical" four days later.

{¶ 5} CO Messer's deposition was admitted as evidence in lieu of his live testimony. (Defendant's Exhibit L.) Messer testified that on the day of the incident, he was returning an inmate to a cell next to plaintiff's cell. According to Messer, while he was removing the inmate's cuffs and leg irons, plaintiff stated to Messer that he was going to "snatch [his] white bitch ass up and make [him] suck his black dick." Messer stated that plaintiff then hit him in the shoulder, causing him to call Sergeant McCroskey.

{¶ 6} Sergeant McCroskey testified that on the day of the incident he was called by Messer to plaintiff's cell, where plaintiff was "screaming threats and racial slurs" at Messer. Sergeant McCroskey testified that he ordered plaintiff to stop screaming, to

¹On April 17, 2007, the court ordered that several of plaintiff's amended complaints be stricken from the record and that the September 22, 2004 amended complaint set forth plaintiff's claims.

which plaintiff replied “fuck you, white bitch. Suck my black dick.” According to Sergeant McCroskey, the following scene unfolded: plaintiff threw a bottle full of an unknown liquid at him and the bottle exploded and splashed liquid on his left side; plaintiff threw a bar of soap that struck him in the left temple; Sergeant McCroskey applied a burst of mace to plaintiff; plaintiff threw a second bar of soap that struck him in the left shoulder; Sergeant McCroskey ordered plaintiff to “cuff up” and fired another burst of mace; plaintiff proceeded to throw several more bars of soap, one of which struck Messer; Sergeant McCroskey applied a third burst of mace; plaintiff stuck his arm out of the “food slot” in his cell door and threw another bar of soap that struck Sergeant McCroskey in the left side; Sergeant McCroskey applied a fourth burst of mace; plaintiff continued to curse and threaten Messer and Sergeant McCroskey, stating that he would “harpoon [their] white asses”; Sergeant McCroskey contacted Lieutenant James Whitman, who responded to the scene; plaintiff threw a bar of soap at Lieutenant Whitman; Lieutenant Whitman applied a burst of mace and gave plaintiff several orders to “cuff up” which plaintiff refused; Captain Rita Moore was contacted and Sergeant McCroskey left the scene.

{¶ 7} Lieutenant Whitman testified that on the day of the incident he was called to plaintiff’s cell to assist Sergeant McCroskey. Lieutenant Whitman testified that their intent was to move plaintiff to segregation because he had thrown soap and an unknown liquid on a CO. According to Lieutenant Whitman, when he arrived at plaintiff’s cell, he administered a burst of mace because plaintiff threw some bars of soap at him. According to Lieutenant Whitman, plaintiff was eventually placed in handcuffs and escorted to segregation by Captain Moore.

{¶ 8} Nurse Roseanne Clagg testified that she examined plaintiff’s medical records in connection with plaintiff’s allegations of excessive use of force. According to Clagg, plaintiff’s medical records show that he was examined on October 19, 2003, after he was sprayed with mace. Clagg testified that at the time of the examination, plaintiff stated that he was “fine” and that she found no injuries or other health problems.

{¶ 9} October 30, 2003 - Plaintiff testified that on October 30, 2003, while he was in segregation, COs came to his cell and sprayed him with mace while he was sleeping and “beat him.” Plaintiff could think of no reason as to why the COs came to his cell that day.

{¶ 10} Sergeant McCroskey testified that he was “on the range” on October 30, 2003, when plaintiff began to kick the door of his cell and then bang his head into it. Sergeant McCroskey stated that he ordered plaintiff to stop and plaintiff responded by threatening him. Sergeant McCroskey testified that he notified the shift captain, who sent Lieutenant Whitman to the scene.

{¶ 11} Lieutenant Whitman testified that on the day of the incident, he responded to plaintiff’s cell and observed plaintiff kicking the door and banging his head against it. Lieutenant Whitman stated that he opened the food slot and attempted to speak with plaintiff, but that plaintiff spit on him. According to Lieutenant Whitman, he administered a short burst of mace, and ordered an extraction team to remove plaintiff from the cell and place him in five-way restraints.

{¶ 12} Defendant introduced the video recording of the October 30, 2003 cell extraction. The video shows the following: Lieutenant Whitman orders plaintiff to “cuff up”; Lieutenant Whitman administers a short burst of mace and the door is opened; five COs wearing protective equipment enter the cell, force plaintiff to the ground, place him in handcuffs, stand him on his feet, and lead him from the cell. The entire encounter takes approximately one minute from the time the door is opened until plaintiff is out of the cell under his own power. No COs are shown striking plaintiff.

{¶ 13} Nurse Clagg testified that plaintiff’s medical records show that he was examined twice on October 30, 2003, after the cell extraction. According to Clagg, plaintiff was first examined at 11:30 a.m. while he was still in the five-way restraints. Plaintiff told the nurse that he was “ok.” The examination revealed that plaintiff’s vital signs were normal, that he had no breaks in his skin and that no treatment was

required. Plaintiff was also examined at 2:30 p.m. and he complained that his right wrist was swollen, but “not from this,” and he denied any other injuries. Plaintiff was then released from the five-way restraints and referred to medical to have his wrist examined.

{¶ 14} April 19, 2004 - Regarding the April 19, 2004 use-of-force incidents, plaintiff testified that he was in his cell having a conversation with an inmate in a nearby cell. Plaintiff testified that a nearby CO had overheard the conversation and did not like its tone. Plaintiff stated that as a result, he was removed from his cell and taken to another cell by Lieutenant Tackett without incident. Plaintiff testified that he was then taken from that cell to a “slammer cell” where his request for a “bedroll” was refused. According to plaintiff, he then became angry and used a shirt to tie the door shut. Plaintiff testified that a cell extraction team was called to extract him from the cell. Plaintiff stated that a CO used a pair of scissors to try and cut the shirt from the door and that he was stabbed in the hand during the attempt.

{¶ 15} Inasmuch as the employees involved in the April 19, 2004 use-of-force incidents were not available, the parties stipulated that the relevant events were accurately described in the use-of-force reports from that day. (Defendant’s Exhibits I, J, K.)

{¶ 16} The first incident occurred at approximately 5:15 p.m. The summary of events is as follows: “[Plaintiff] refused several direct orders to be handcuffed. At this time, Lt. Tackett administered one burst of chemical agent. [Plaintiff] then began to throw state soap at Lt. Tackett. Lt. Tackett then administered a second burst of chemical agent, but this inmate continued to throw objects at Lt. Tackett. [Plaintiff] was then escorted to J-2. [Plaintiff] was checked by Nurse M. Sanford.” (Defendant’s Exhibit J, Page 1.)

{¶ 17} The second incident occurred at approximately 5:57 p.m. and is summarized as follows: “[Plaintiff] broke his food tray into pieces and refused to give it up. Capt. Oppy responded and at this time, [plaintiff] attempted to spit on Capt. Oppy.

Capt. Oppy then administered one burst of chemical agent. [Plaintiff] was then checked by Nurse T. Lykins.” (Defendant’s Exhibit I, Page 1.)

{¶ 18} The final incident of April 19, 2004, occurred at 8:30 p.m. and is summarized as follows: “[Plaintiff] ripped [sic] his mattress into pieces and threw it on the range. Lt. Tackett assembled the SRT * * *. Lt. Tackett then gave [plaintiff] a direct order to be handcuffed, which this inmate refused. Lt. Tackett then ordered the cell door open, but was unable to open due to [plaintiff] having the door jammed. Lt. Tackett gave [plaintiff] a direct order to unjam the door, but this inmate refused. At this time, Lt. Tackett administered one burst of chemical agent. [Plaintiff] then unjammed the door and the SRT entered the cell and escorted this inmate to k2 and placed him in 5-way restraints. At 10:50pm, [plaintiff] refused range of motion. At 12:50am and 2:50am, no range of motion was conducted due to [plaintiff] being asleep. At 4:50am, Lt. Bedford assembled the SRT which released [plaintiff] from 5-way restraints. [Plaintiff] was checked by Nurse R. Durham and Nurse K. Jenkins.” (Defendant’s Exhibit K, Page 1.)

{¶ 19} Contained within the use-of-force reports for the 5:57 p.m. and 8:30 p.m. incidents are medical exam reports filed by the respective nurses. Nurse Lykins stated in her report of the 5:57 p.m. incident that plaintiff suffered “no evident injury” and that no treatment was required at the time. (Defendant’s Exhibit I, Page 23.) In his report following the 8:30 p.m. incident, nurse Jenkins noted a small cut to the index finger of plaintiff’s left hand, and small cuts to the fourth and fifth fingers of his right hand. Jenkins states in his report that the areas were cleaned, and that “medical” was notified to check plaintiff upon his release from the five-way restraints. (Defendant’s Exhibit K, Page 37.) Nurse Durham examined plaintiff when he was released from the five-way restraints. She noted small cuts on his hands but noted that no treatment was necessary. (Defendant’s Exhibit K, Page 36.)

{¶ 20} 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:

{¶ 21} “(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:

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

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

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

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

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

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

{¶ 28} 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.)

{¶ 29} There is no dispute that plaintiff sustained some minor injuries and suffered some discomfort as a result of the multiple cell extractions. The issue, however, is whether the use of force by defendant’s employees during these extractions was lawful under the circumstances. Based upon the testimony and evidence presented at trial, the court finds that the officers’ testimony was more credible than

plaintiff's testimony regarding the justification for, and the actions taken during, the extractions. Accordingly, the court finds that defendant's employees' use of force was lawful and appropriate for the situations presented to them. 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

cc:

Christopher P. Conomy
Jennifer A. Adair
Stephanie D. Pestello-Sharf
Assistant Attorneys General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

James Collins, #A288-920
P.O. Box 45699
Lucasville, Ohio 45699

Magistrate Steven A. Larson

MR/cmd
Filed March 27, 2009
To S.C. reporter April 28, 2009