

**IN THE COURT OF CLAIMS OF OHIO**

JARVIS KILLINGSWORTH

Plaintiff

v.

OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTION

Defendant

Case No. 2022-00562JD

Magistrate Anderson M. Renick

DECISION OF THE MAGISTRATE

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{¶1} Plaintiff, an inmate in the custody and control of defendant, Ohio Department of Rehabilitation and Correction (ODRC), alleges that defendant’s employees assaulted him in the infirmary of Lebanon Correctional Institution (LeCI) and used unreasonable force against him which resulted in injuries. The issue of liability was tried before the undersigned magistrate on April 24, 2024. For the following reasons, the magistrate recommends judgment in defendant’s favor.

**Factual Background**

{¶2} Plaintiff testified that on February 11, 2022, he was involved in a fight with inmate Blanchard in the “rec cage” after the 4:00 p.m. institutional count. Plaintiff stated that, during the physical altercation, he struck Blanchard but Blanchard did not make contact with him and there was no bloodshed. Plaintiff related that he was taken to the infirmary after 4:20 p.m., at which time he did not have any blood on his face. Plaintiff testified that he was handcuffed after the fight and remained so while in the infirmary. Plaintiff testified that he was able to read the name of the examining nurse, Kimberley Morris, on the computer in infirmary. Plaintiff admitted that he attempted to start a conversation with Morris, and said, “I know your name now” and “so what I gotta do for your number?” According to plaintiff, Morris responded, “What did you just say?” and plaintiff repeated himself. Plaintiff testified that Morris informed corrections officers (COs)

Ashcraft and Gibson that he was making inappropriate comments towards her, whereupon CO Ashcraft used OC spray on plaintiff for “disrespecting nurses.” Plaintiff stated that he crouched to protect his face from the OC spray when Lieutenants Holley and Links, COs Ashcraft, Gibson and Emmons began to assault him. Plaintiff contends that he did not have injuries and blood on his face when he arrived at the infirmary.

{¶3} CO Caleb Gibson testified that he escorted plaintiff to exam room one in the infirmary after the fight in the rec cage. Gibson related that he had his back to plaintiff while he was talking to CO Ashcraft when the nurse informed the COs that plaintiff was acting inappropriately towards her; specifically, plaintiff called her by her first name and had asked for her phone number. Gibson stated that the COs went into the exam room to address the issue when plaintiff became agitated and called the nurse a liar, and then plaintiff lunged toward her. Consistent with his statement on the use of force report he completed, Gibson testified that CO Ashcraft deployed OC and gained plaintiff’s compliance before they called a supervisor. CO Gibson acknowledged that plaintiff had blood on his face but he testified that he did not know when the injury occurred and he denied striking plaintiff. According to Gibson, there was no physical altercation between the COs and plaintiff in the infirmary.

{¶4} Dana Ullery, a health care administrator (HCA) at LeCI, testified that defendant’s medical staff complete a medical exam report when there is a use of force. Ullery stated that the report includes the patient narrative, medical staff findings, and details any treatment that is provided. Ullery identified the medical exam report that was completed by Nurse Morris as a result of the incident. (Defendant’s Exhibit H.) Ullery testified that any abnormal findings, including lacerations or facial wounds, would be noted in the medical exam report.

{¶5} Lieutenant Brian Holley testified that he did not observe the incident and that he reviewed the reports that were submitted to him. He identified the supervisor’s use of force summary report he completed for the February 11, 2022 incident. (Defendant’s Exhibit F.) Holley stated that use of force summary reports typically included a statement from the officer who used force, witness statements, and the medical and conduct reports for the incarcerated person/persons involved.

{¶6} CO James Ashcraft testified that on February 11, 2022, he was posted at the security desk in the LeCl infirmary, which was close enough to exam room one for him to hear what was happening in the room. Ashcraft recalled that on the day of the incident, plaintiff arrived at the infirmary in restraints and was escorted to exam room one for treatment. Ashcraft recalled that Nurse Morris yelled to get his attention and he responded to the exam room because plaintiff was making inappropriate comments to her. Ashcraft stated that he gave plaintiff a direct order to stop talking inappropriately to Morris. According to Ashcraft, plaintiff moved toward Morris after the order was given; then, concerned about Morris' safety, Ashcraft deployed OC spray in accordance with his training and experience. Ashcraft explained that an inmate who is wearing restraints can still be a threat to others. Ashcraft testified that the COs did not assault plaintiff or use any other force after the OC spray was deployed.

### **Conclusions of Law and Analysis**

{¶7} Plaintiff's complaint alleges unnecessary and/or excessive force and states claims for battery and/or negligence. To meet his burden at trial, plaintiff needed to prove his claims by a preponderance of the evidence. *Brothers v. Morrone-O'Keefe Dev. Co., LLC*, 2007-Ohio-1942 (10th Dist.).

To prove a claim for battery, a plaintiff must demonstrate that the defendant "act[ed] intending to cause a harmful or offensive contact, and . . . a harmful contact result[ed]." A defendant may defeat a battery claim by establishing a privilege or justification defense. However, "the use of excessive force by one privileged to use force on another may constitute battery."

To prove actionable negligence, a plaintiff must show the existence of a duty, breach of that duty, and injury proximately caused by the breach. The state owes a duty to inmates to reasonably care for the inmates' health, care, and well-being. *Brown v. Dep't of Rehab. & Corr.*, 2014-Ohio-1810, ¶ 13-14 (10th Dist.)

{¶8} Ohio Adm. Code 5120-9-01(B)(1) defines force as "the exertion or application of a physical compulsion or constraint." "Ohio Adm. Code 5120-9-01 provides guidance for determining whether a correctional officer's use of force is privileged and/or

reasonable.” *Id.* at 15. Correctional officers “considering the use of force shall evaluate the need to use force based on the circumstances as known and perceived at the time it is considered.” *Id.* Force may be used “only to the extent deemed necessary to control the situation.” Ohio Adm. Code 5120-9-01(C)(1)(a). COs may use force “[w]hen necessary to control or subdue an inmate who refuses to obey prison rules, regulations or orders.” Ohio Adm. Code 5120-9-01(C)(2)(a). Corrections officers may also use force in “[d]efense of another from physical attack or threat of physical harm.” Ohio Adm. Code 5120-9-01(C)(2)(b) and (c). Excessive force “exceeds that force which reasonably appears to be necessary under all the circumstances surrounding the incident.” Ohio Adm. Code 5120-9-01(B)(3). “The use of force is an obvious reality of prison life.” *Brown* at ¶ 15.

{¶9} Plaintiff admitted that he was involved in a 10 to 15 minute fight with inmate Blanchard. The conduct report that was completed as a result of the incident indicated that Blanchard was throwing closed-fist punches to plaintiff’s face region. (Defendant’s Exhibit A.) The court is persuaded by the evidence that plaintiff’s facial injuries were sustained in the fight with inmate Blanchard and that he was not assaulted by the COs following their use of OC spray to obtain compliance.

{¶10} The testimony of both Gibson and Ashcraft was credible and consistent with their use of force and conduct reports. Plaintiff admitted that he made inappropriate comments toward Nurse Morris and the greater weight of the evidence established that he moved toward her after he was given a direct order to cease the comments. The court finds that the testimony of defendant’s staff was credible and established that the only force used against plaintiff in the infirmary that day was OC spray. It was reasonable for CO Ashcraft to react to plaintiff’s movement and the court finds that he was privileged to use force to subdue or control plaintiff who posed a credible threat of physical harm to Morris. Plaintiff failed to prove that the amount of OC spray that was used to gain his compliance was excessive or unnecessary. Although plaintiff was in restraints when this conduct occurred, CO Ashcraft explained that a restrained inmate can pose a threat to others.

{¶11} The court finds that the corrections officers were privileged to use force and that the force used was minimal, necessary and reasonable under the circumstances.

The court concludes that plaintiff failed to prove that the COs violated the duty of reasonable care owed to plaintiff. Based upon the foregoing, the magistrate recommends judgment in defendant's favor.

*{¶12} 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).*

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ANDERSON RENICK  
Magistrate

Filed July 12, 2024  
Sent to S.C. Reporter 8/23/24