

IN THE COURT OF CLAIMS OF OHIO

BLAKE WILLIAMS

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2023-00100JD

Magistrate Gary Peterson

DECISION OF THE MAGISTRATE

{¶1} Plaintiff, an inmate in the defendant’s custody and control, brings this action against defendant arising out of an incident where corrections officers used force on him. The case proceeded to trial before the undersigned magistrate. For the reasons that follow, the magistrate recommends that judgment be entered in favor of defendant.

Findings of Fact

{¶2} The following facts are derived from the testimony of plaintiff, corrections officer Keith Jones, corrections officer Tanner Eubanks, corrections officer Trevor Leeth, corrections officer Dustin Pollock, nurse Lisa Dembski, and warden’s administrative assistant Allan Szoke, in addition to the exhibits, which includes a video recording of the incident.

{¶3} On October 7, 2022, plaintiff proceeded to the chow hall to eat breakfast at Ross Correctional Institution. Jones denied plaintiff access to the chow hall as he was late in joining his unit for chow. Jones subsequently observed plaintiff in the yard shaking hands with other inmates and suspected that plaintiff may be involved with exchanging contraband. Jones therefore proceeded with his partner, Eubanks, to unit 2B to identify plaintiff and conduct a strip search.

{¶4} Jones approached the officer’s desk and requested to view video footage to identify plaintiff. Leeth and Pullock complied and assisted in identifying plaintiff. Jones thereafter gave plaintiff a direct order to proceed to the porter’s closet for a strip search.

Video surveillance footage of the unit captures the main room but does not include any footage of what occurred in the porter's closet. The porter's closet is directly behind and to the side of the officer's desk. Eubanks, Leeth, and Pullock remained at the officer's desk while Jones and plaintiff proceeded to the porter's closet. Jones' body camera was not activated at this time so as to provide privacy to plaintiff while conducting the strip search. Only plaintiff and Jones entered the porter's closet. Two unidentified inmates subsequently exited the porter's closet. Within seconds of the door closing after the two unidentified inmates exited, the officers at the desk turned their attention to the porter's closet and proceeded to enter the closet due to noise and commotion coming from the closet.

{¶5} Jones reported that while in the closet, plaintiff lunged at him. Jones responded by attempting to keep plaintiff at a distance and to protect himself. Plaintiff maintained that Jones struck him and that he at no point struck Jones. Jones' testimony is more credible as plaintiff, when provided with an opportunity to identify Jones as an attacker during his medical exam following the incident, declined to do so and instead indicated that he was involved in a fight—a term that indicates he engaged in combat with Jones rather than was attacked by Jones. Jones' account is consistent with what he subsequently wrote in an incident report.

{¶6} Upon opening the door, Eubanks observed an altercation between plaintiff and Jones and characterized the situation as plaintiff acting aggressive and resistant towards Jones. Leeth observed plaintiff striking Jones and responded by taking plaintiff to the ground. Pullock observed the scuffle but was unable to fully enter the closet due to the size of the closet and instead focused on crowd control as many inmates had gathered around to observe the affray. Leeth and Jones subsequently obtained control of plaintiff and physically escorted him out of the unit. Leeth and Jones did not bang plaintiff's head against the door as the trio exited the unit. As they exited the unit, Leeth and Jones can be seen extending their arms to open the door to exit the unit with plaintiff in the middle, his head slumped down. The video does not show plaintiff being rammed into the door and Leeth and Jones credibly denied ramming plaintiff's head into the door on the way out of the unit.

{¶7} Plaintiff was escorted to medical for a physical examination performed by Dembski. Dembski did not notice any bruising or bleeding. Plaintiff reported that he engaged in a fight but did not provide any other context or detail. Plaintiff reported that his neck and back were injured. Dembski, however, noted that plaintiff's speech was fluent, he had no labored breathing, his gait was steady, and he was alert and oriented. Dembski provided ibuprofen and recommended ice as needed. Plaintiff did not request any further medical care while he was placed in restrictive housing as he did not complete any health service request and did not request to be seen when Dembski made rounds in the unit. A use of force investigation was thereafter completed.

Conclusions of Law and Analysis

{¶8} "Allegations of use of unnecessary or excessive force against an inmate may state claims for battery and/or negligence." *Brown v. Dept. of Rehab. & Corr.*, 2014-Ohio-1810, ¶ 13 (10th Dist.). "To prove battery, the plaintiff must prove that the intentional contact by the defendant was harmful or offensive. . . . Ohio courts have held that, in a civil action for assault and battery, the defendant has the burden of proving a defense of justification, such as the exercise of lawful authority." *Miller v. Ohio Dept. of Rehab. & Corr.*, 2012-Ohio-3382, ¶ 11 (10th Dist.). "A defendant may defeat a battery claim by establishing a privilege or justification defense." *Brown* at ¶ 13. "However, 'the use of excessive force by one privileged to use force on another may constitute battery.'" *Russell v. Ohio Dept. of Rehab. & Corr.*, 2019-Ohio-4695, ¶11, (10th Dist.), quoting *Shadler v. Double D. Ventures, Inc.*, 2004-Ohio-4802, ¶ 19 (6th Dist.).

{¶9} "To prevail on a negligence claim, a plaintiff must establish the existence of a duty, a breach of the duty, and an injury resulting proximately therefrom." *Woodbridge v. Ohio Dept. of Rehab. & Corr.*, 2020-Ohio-891, ¶ 30 (10th Dist.). "Ohio law imposes a duty of reasonable care upon the state to provide for its prisoners' health, care, and well-being." *Ensmann v. Ohio Dept. of Rehab. & Corr.*, 2006-Ohio-6788, ¶ 5 (10th Dist.).

{¶10} "The use of force is sometimes necessary to control inmates." *Jodrey v. Ohio Dept. of Rehab. & Corr.*, 2013-Ohio-289, ¶ 17 (10th Dist.). "Correctional officers considering the use of force must evaluate the need to use force based on the circumstances as known and perceived at the time it is considered." *Brown* at ¶ 15, citing

Ohio Adm.Code 5120-9-01(C). “[T]he precise degree of force required to respond to a given situation requires an exercise of discretion by the corrections officer.” *Ensmann* at ¶ 23. “In Ohio Adm.Code 5120-9-01, the Ohio Administrative Code sets forth the circumstances under which correctional officers are authorized to use force against an inmate.” *Id.* at ¶ 6.

Ohio Adm.Code 5120-9-01 provides, in part:

(C) Guidelines regarding the use of force. . . .

. . .

(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:

- (a) Self-defense from physical attack or threat of physical harm.
- (b) Defense of another from physical attack or threat of physical attack.
- (c) When necessary to control or subdue an inmate who refuses to obey prison rules, regulations or orders.
- (d) When necessary to stop an inmate from destroying property or engaging in a riot or other disturbance.
- (e) Prevention of an escape or apprehension of an escapee; or
- (f) Controlling or subduing an inmate in order to stop or prevent self-inflicted harm.

{¶11} “Pursuant to Ohio Adm.Code 5120-9-01(C)(1)(a), correctional officers ‘may use force only to the extent deemed necessary to control the situation.’” *Brown*, 2014-Ohio-1810, at ¶ 16. “Additionally, correctional officers ‘should attempt to use only the amount of force reasonably necessary under the circumstances to control the situation and shall attempt to minimize physical injury.’” *Id.*, quoting Ohio Adm.Code 5120-9-01(C)(1)(b). “‘Excessive force’ means ‘an application of force which, either by the type of force employed, or the extent to which such force is employed, exceeds that force which reasonably appears to be necessary under all the circumstances surrounding the incident.’” *Russell*, 2019-Ohio-4695, at ¶ 14, quoting Ohio Adm.Code 5120-9-01(B)(3).

{¶12} The magistrate finds that plaintiff failed to prove his claim by a preponderance of the evidence and that the force used was necessary and reasonable under the circumstances. Because only plaintiff and Jones were in the closet at the time the altercation began, and because they both claimed the other was the initial aggressor, the court is required to determine whether Jones or plaintiff was the initial aggressor.

{¶13} Plaintiff offered nothing other than his testimony and failed to impair the credibility of Jones. Jones' testimony was more credible than plaintiff's as it was consistent with that of the other officers who opened the door and credibly testified that they witnessed plaintiff either striking Jones or being the aggressor towards Jones in the closet. The corrections officers' accounts correspond with the statements they subsequently provided in their incident reports, which were admitted as exhibits. Additionally, when plaintiff was receiving medical treatment following this incident, he did not state that he was attacked by Jones when he was given the opportunity to explain what happened. Furthermore, there is no evidence that plaintiff subsequently complained to defendant's staff that he was attacked by Jones, nor did he ever seek medical treatment for injuries caused by Jones, further undermining his credibility. Finally, the medical exam did not reveal any injuries that would be consistent with Jones attacking plaintiff—further lending credibility to Jones' version of events.

{¶14} There is no evidence that the force used was disproportionate or somehow excessive. Rather, the evidence shows that the force used was reasonable and necessary under the circumstances to protect an officer from harm, for self-defense, and to gain plaintiff's compliance. Jones attempted to keep plaintiff at bay until help arrived from other officers. The other officers assisted in taking plaintiff to the ground, gaining his compliance, and escorting him out of the unit. No other force was used.

{¶15} Finally, plaintiff's claim that his head was rammed into the door as he was escorted out of the unit lacks credibility as it is not shown on the video footage of the incident. Rather, the video shows that the officers' arms are extended out toward the door while plaintiff's head is slumped down. Moreover, Leeth and Jones credibly testified that they did not ram or slam plaintiff's head into the door as they exited the unit.

{¶16} In the final analysis, there is no credible evidence that Jones was the initial attacker and that Jones rammed plaintiff's head into the door as they exited the unit.

Rather, it was shown that the force used was reasonable and necessary under the circumstances. Accordingly, plaintiff's claim must fail, and it is recommended that judgment be entered in favor of defendant.

{¶17} 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).

GARY PETERSON
Magistrate

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