

**IN THE COURT OF CLAIMS OF OHIO**

JOHNNY THOMAS

Plaintiff

v.

OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTION

Defendant

Case No. 2023-00089JD

Magistrate Robert Van Schoyck

DECISION OF THE MAGISTRATE

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{¶1} Plaintiff, an inmate in the custody and control of defendant, brought this action alleging that a corrections officer used excessive force against him on August 28, 2022, at Richland Correctional Institution. The case proceeded to trial before the undersigned magistrate. As explained below, judgment is recommended for defendant.

**Summary of Testimony**

{¶2} Plaintiff testified that on the evening of August 28, 2022, he was standing on his locker box, folding clothes that were laying atop his upper bunk bed, when Corrections Officer Matthew Koehler approached and said that he needed to see a shirt plaintiff had in front of him. Plaintiff stated that he tossed the shirt to Koehler, who then said that he needed to see what was in plaintiff's hand or hands, which, in his recollection, were slightly closed. Plaintiff denied that Koehler told him to step down off his locker box. Rather, according to plaintiff, he asked Koehler "what are you talking about", at which point Koehler put his hands on plaintiff's back and slammed him into a metal bed divider. Plaintiff stated that he retreated and asked "what the hell did you slam me for?" Plaintiff stated that Koehler told him to get on the ground, but plaintiff explained that he did not do so because he feared for his safety. Then, according to plaintiff, Koehler produced a canister of OC (oleoresin capsicum) spray and sprayed him.

{¶3} In plaintiff's view, at no point during these events did he do anything wrong. Plaintiff denied acting aggressively or putting Koehler in danger.

{¶4} Plaintiff stated that he was escorted afterward to the infirmary, where the staff cleaned the spray from his face, and then he was moved to the segregation housing unit of the prison. Plaintiff recalled touching his face and felt it was swollen. Plaintiff discussed the proceedings before the Rules Infraction Board that resulted from the incident, noting that one of the charges against him—drug possession—was dismissed. Plaintiff also authenticated an Inmate Use of Force Statement he submitted for the use of force investigation conducted by prison authorities. (Defendant’s Exhibit B.)

{¶5} Corrections Officer Koehler testified that he is employed by defendant at Richland Correctional Institution and has worked as a Corrections Officer for about seven years. On the day of the incident, Koehler stated, he had been on duty in the prison library but his supervisor directed him to move to the housing unit where the events took place because it had been the scene of two fights that day and his assistance was sought to help maintain control of the unit. Koehler recounted that his orders were to make constant rounds there, meaning constantly walking through the unit to make sure the inmates were behaving, including not fighting nor using or passing contraband.

{¶6} As Koehler explained, he was outfitted with a body-worn camera that made an audio and video recording of the events. (Defendant’s Exhibit A.) Explaining what the camera captured, Koehler testified that the recording introduced at trial began when he was near the officers’ station and continued as he walked through the housing unit. Koehler identified the point where plaintiff came into view and explained that it appeared to him that plaintiff attempted to conceal something as he walked past. Because he suspected plaintiff was concealing something, Koehler explained, he stopped and asked to see a shirt that was in front of plaintiff. Koehler testified that plaintiff tossed him a shirt, but it was not the item that he wanted to see. At this point in the recording, Koehler asked to see plaintiff’s hands, and when plaintiff did not immediately show his hands Koehler told him to step down from the locker box and told him not to reach for anything on the bed. As Koehler explained, plaintiff did not follow his directives and instead continued combing through items atop the bed.

{¶7} Koehler testified that he then came around behind plaintiff to gain control of whatever plaintiff was concealing, and as he did so, he observed plaintiff put something in his mouth, although Koehler acknowledged that this is not visible in the recording (in

which plaintiff's back was to the camera at that time). According to Koehler, the concealed property appeared to be small, rolled-up baggies. Koehler stated that he reached in front of plaintiff with his left hand to secure whatever plaintiff was concealing, at which point plaintiff pushed his body against Koehler, prompting Koehler to try to get control of plaintiff because he felt plaintiff posed a danger to him. Plaintiff then pulled away, Koehler stated, causing them both to fall into a bedframe and then onto the floor of the aisle between the rows of bunk beds, with plaintiff landing on top of him; he denied purposefully slamming plaintiff into a bedframe, as plaintiff claimed. To protect himself while in a vulnerable position, Koehler tried to take a defensive position by grabbing hold of plaintiff, he stated. As Koehler testified, they both then got up and plaintiff took a fighting stance, ignoring several direct orders by Koehler for him to get on the ground, even after Koehler pulled out his canister of OC spray. Koehler testified that he then sprayed plaintiff and again ordered plaintiff to get on the ground. According to Koehler, when plaintiff complied with that order and kneeled, this was the first time throughout the incident that plaintiff complied with any of his directives.

{¶8} Koehler was asked on cross-examination about department policy requiring officers to call for assistance when an inmate refuses to obey orders, and he explained that he did so once plaintiff was subdued; he explained that the policy is to summon assistance when it is safe and reasonable to do so, and that he did so in this case.

{¶9} After the incident, Koehler stated, he prepared a Use of Force Report pursuant to department policy. (Defendant's Exhibit B.) Koehler also stated that he issued plaintiff a Conduct Report charging him with infractions of prison rules, including disobeying a direct order, physically resisting a direct order, and possession of drugs. (Plaintiff's Exhibit 1.) Regarding the drug possession charge, Koehler testified that he wrote in the Conduct Report that plaintiff could be seen swallowing something in the recording because that is what he observed and he assumed it was captured on camera, but upon seeing the recording he acknowledged that this was not visible in the recording. Koehler stated that he had no knowledge of any contraband being recovered in connection with this incident but explained that he charged plaintiff with drug possession based on past practice where the Rules Infraction Board found inmates guilty of this when

they concealed drugs, so he left it up to the Rules Infraction Board to decide what to do with that charge.

{¶10} Koehler testified that although he did not observe it at the time, when he reviewed the body-worn camera footage later, he noticed that around the same time that he sprayed plaintiff, plaintiff reached into a pants pocket and removed an item that he then tossed toward an inmate named Adams, who picked it up and walked away.

{¶11} Shawn Shelton, R.N. testified that he is employed with defendant as the Healthcare Administrator at Richland Correctional Institution, where he supervises the medical department. Shelton explained that he has access to inmates' medical records and he identified several of plaintiff's records. One of the records was a Nursing Medical Exam Report corresponding to plaintiff's visit to the infirmary after the incident, and it was noted at that time that a nurse examined him and that he was able to rinse his face to clean off the OC spray. (Defendant's Exhibit D.) Shelton identified subsequent records from August and September 2022 that reflect follow-up medical attention that plaintiff received for his complaints, including neck and shoulder X-rays and an optometry exam. (Defendant's Exhibits E-J.) Finally, Shelton identified several records from March 2023 where plaintiff voiced complaints that he apparently felt were related to the incident and he received attention from defendant's medical providers in response. (Defendant's Exhibits L-P.)

### **Law and Analysis**

{¶12} "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.).

{¶13} “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.).

{¶14} “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.

{¶15} 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.

{¶16} “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* 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).

{¶17} Upon review of the evidence presented at trial, the magistrate finds as follows. On August 28, 2022, at approximately 8:20 p.m., plaintiff was standing on a locker box and facing his upper bunk bed. Corrections Officer Koehler, making rounds through the housing unit at that time, suspected that plaintiff was concealing something as he walked by. Koehler therefore asked to see a shirt that plaintiff had in front of him. Plaintiff handed over a shirt but still had something in at least one of his hands and Koehler asked what was in his hand. Plaintiff did not show Koehler what he had. Koehler ordered plaintiff to “come down” off the locker box and to let him see his hands but plaintiff did not comply. Koehler then came behind plaintiff and reached with his left hand toward plaintiff’s hands to gain control of the item or items that plaintiff had. Plaintiff pushed back into Koehler, however, rather than cooperate and follow Koehler’s directive to show his hands and show whatever he was holding or concealing. Plaintiff’s conduct at this point presented a threat of harm to Koehler, who then attempted to get ahold of plaintiff to subdue him but plaintiff pulled away and as plaintiff came down from the locker box the two of them fell to the ground. To the extent plaintiff’s body contacted the bedframe when he and Koehler fell, it was incidental to the foregoing events that were brought about by plaintiff’s own conduct rather than being caused by an intentional act of Koehler like plaintiff claims.

{¶18} Plaintiff landed on top of Koehler when they fell to the ground, which placed Koehler at further risk of harm. When they both stood up, plaintiff assumed a combative

stance, representing a continued threat of physical harm to Koehler. Koehler issued direct orders for plaintiff to get on the ground, but plaintiff refused. During this time, plaintiff surreptitiously transferred an item from his pants pocket to another inmate. Finally, as plaintiff persisted in disobeying his orders to get on the ground, Koehler briefly deployed OC spray on plaintiff to subdue him, and when Koehler again ordered plaintiff to get on the ground he kneeled and was handcuffed. The amount of OC spray deployed by Koehler was reasonable, not exceeding what was necessary to subdue plaintiff and gain control of the situation. Koehler called for assistance from other security personnel and plaintiff was escorted to the infirmary for a routine examination.

{¶19} The force used by Koehler was justified and privileged under the circumstances in that plaintiff refused to obey several direct orders and conducted himself in such a manner—including pushing against Koehler, pulling away from Koehler, and acting aggressively—that Koehler reasonably perceived him to pose a threat of physical harm. The degree of force used by Koehler was not excessive and satisfied the duty of reasonable care.

{¶20} Koehler's testimony was substantially corroborated by the body-worn camera recording and constituted the more credible version of the events.

{¶21} Accordingly, whether under a theory of battery or negligence, plaintiff is not entitled to relief regarding his claim that Corrections Officer Koehler used excessive force against him.

## **Conclusion**

{¶22} Based upon the foregoing, the magistrate finds that plaintiff did not prove his claim by a preponderance of the evidence. Accordingly, judgment is recommended in favor of defendant.

*{¶23} 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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ROBERT VAN SCHOYCK  
Magistrate

**Filed October 11, 2024**  
**Sent to S.C. Reporter 11/21/24**