

[Cite as *Duff v. Ohio Dept. of Rehab. & Corr.*, 1992-Ohio-274.]

IN THE COURT OF CLAIMS OF OHIO

DENNIS DUFF, #193-815 :  
 Plaintiff : CASE NO. 91-02206  
 v. : REFEREE REPORT  
 DEPARTMENT OF REHABILITATION : Fred D. Gartin, Referee  
 AND CORRECTION :  
 Defendant :

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Dennis Duff, Pro se

Lee I. Fisher, Attorney General  
 John P. Reichley, Esq.  
 for Defendant

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On June 22, 1992, this matter came on for trial before the referee sitting at Warren Correctional Institution (WCI), Lebanon, Ohio. Plaintiff is an inmate under the custody and control of defendant.

Plaintiff filed a complaint on February 4, 1991, alleging that while at the Correctional Reception Center, Psychiatric Residential Unit, (PRU), Sgt. Phillip Carter, a corrections officer, talked disrespectfully to him, shoved him in the corner, grabbed him by the hair and slammed his head into the wall. Plaintiff further alleges he was forcefully escorted down a corridor to a room where Sgt. Carter again slammed him into the corner and beat his head. Plaintiff alleges that this incident

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occurred as a result of a disagreement over his property and that, while at PRU, he was deprived of personal property including legal mail.

Defendant asserted that this incident never occurred as plaintiff alleges and that the outcome of the case is dependent upon credibility of the witnesses.

Officers Tony Ward and Gary Davis transported plaintiff from WCI to the PRU. Upon arriving at PRU, Sgt. Carter informed plaintiff that he would not be allowed to keep all of his property and he could either send it home or back to his parent institution, WCI, or the property would be destroyed. At that point, plaintiff began arguing with Sgt. Carter and Sgt. Carter turned plaintiff around and escorted him down the hall to a room where he waited to be processed in at PRU.

Officer Ward testified that plaintiff became irate and that Sgt. Carter searched plaintiff and escorted him down the corridor. Officer Ward testified that he did not fill out an incident report because he believed it was not necessary, as nothing unusual happened.

Officer Davis testified that plaintiff "became vocal" and Sgt. Carter turned plaintiff around and took him down the corridor to a locked room. Officer Davis testified he did not write an incident report because he did not consider it a use of force. However, he wrote out an incident report six months later when requested to do so.

Officer Davis further testified that he came back later and removed plaintiff's shackles and handcuffs since the restraints were the property of WCI and he did not notice anything wrong with plaintiff.

Sgt. Carter testified that plaintiff brought a tremendous amount of property to the PRU and he was told to send it either back to WCI or to his home or it would be destroyed. Sgt. Carter testified that at that point plaintiff became belligerent and other officers came out to see what the noise was about. Sgt. Carter testified he then turned plaintiff around, patted him down, and escorted him down the hall. Sgt. Carter denied any other physical contact occurred.

Sgt. Carter testified that PRU did not have the facilities to keep personal property and they did not have any locker boxes. Sgt. Carter stated this is because ordinarily, an inmate does not stay at PRU for any length of time. Sgt. Carter further testified that there is an established policy as to what property an inmate can keep at PRU.

Plaintiff testified that Sgt. Carter came within an inch of his face, slammed him into the wall, grabbed him by the hair and escorted him down the hall. Plaintiff further testified that he was slammed into the corner of the room located off the corridor.

Plaintiff testified he was having emotional problems due to the death of his mother.

A determination of the case at bar requires an analysis of the law on battery.

Battery is the unlawful touching the person of another or the striking, beating, or wounding of another by the aggressor with the intent of inflicting injury upon the person assaulted \*\*\* such intent need not, however, be an expressed intent but may be inferred from the nature of the defendant's act or conduct, nor is it necessary that the defendant act in anger or with malice toward the person when the battery was directed.

6 Ohio Jurisprudence 3d (1978), 103, Assault, Civil Aspects, Section 4.

Defendant would be liable if Sgt. Carter used more force than was necessary. Drolesbaugh v. Hill (1901), 64 Ohio St. 257.

However, the force used, as long as it was no more than necessary, would be justified and a defense to an action for battery. Skinner v. Brooks (1944), 74 Ohio App. 288. The referee finds Sgt. Carter did use some force on plaintiff to get him calmed down. However, plaintiff's state of mind obviously caused him to perceive the action more drastically. Plaintiff disobeyed direct orders to quiet down and Sgt. Carter acted properly. Sgt. Carter used no more force than necessary and patting down inmates is part of the daily routine in the institutions. Defendant cannot be expected to fill out reports every time an inmate is patted down and escorted.

