

[Cite as *Green v. Dept. of Rehab. & Corr.*, 2001-Ohio-6980.]

IN THE COURT OF CLAIMS OF OHIO

|                                                |   |                                 |
|------------------------------------------------|---|---------------------------------|
| GEORGE E. GREEN                                | : |                                 |
| Plaintiff                                      | : | CASE NO. 99-06910               |
| v.                                             | : | <u>MAGISTRATE DECISION</u>      |
| DEPARTMENT OF REHABILITATION<br>AND CORRECTION | : | Anderson Renick, Magistrate     |
| Defendant                                      | : |                                 |
|                                                | : | : : : : : : : : : : : : : : : : |

Plaintiff brings this action against defendant alleging negligence. The case was tried to a magistrate of the court on the sole issue of liability.

At all times relevant hereto, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. On the afternoon of March 13, 1997, plaintiff was transferred from Unit D1 to D3 at the Corrections Reception Center (CRC) in Orient, Ohio. The D units housed inmates with mental health or disciplinary problems. After plaintiff entered the unit he was subject to a "shakedown" for weapons or contraband. During the shakedown, plaintiff became involved in a verbal confrontation with Corrections Officers (CO) James Stewart and Bruce Bolden. CO John Ison was working nearby as the "keyman," who controls the front door to the D units.

There was conflicting testimony at trial concerning the cause of the verbal confrontation. Plaintiff contends that CO Bolden became angry with him because he was "mumbling."

[Cite as *Green v. Dept. of Rehab & Corr.*, 2002-Ohio-1980.]

Plaintiff testified that he did not respond to the CO's questions regarding the cause of his mumbling because he did not know who had made the comment. Plaintiff further testified that CO Bolden poked him in the chest and asked him if he had a problem participating in the search. In response, CO Bolden testified that plaintiff used threatening and obscene language to express his displeasure with the "shakedown." According to Bolden, plaintiff disregarded a direct order to calm down and participate in the search. It is not disputed that, when approached by CO Bolden, plaintiff stated: "Evidently, you don't know who you are fucking with."

CO Ison responded to Unit D3 when he heard yelling. Upon arrival, he observed plaintiff being verbally abusive. He and CO Bolden then handcuffed plaintiff, and escorted him out of the unit. At some point during the escort, plaintiff began to resist and was placed in an "escort hold" that the COs were trained to use when an inmate was not cooperating. The escort technique involved a CO placing one of his arms underneath the inmate's arms while the inmate's arms were being cuffed behind his back. Plaintiff claims that the escort technique exacerbated a pre-existing shoulder injury and caused him great pain. Plaintiff informed the COs that his shoulder was injured and that he was in pain, but he was not released from the escort hold. The COs testified that plaintiff made other direct threats against them, which plaintiff denied.

CO Ison helped escort plaintiff to the "keyman" post. At that point, Sgt. Robert Castle began to assist CO Bolden. Both Bolden and Castle continued to use the escort hold despite plaintiff's complaints. Castle testified that plaintiff

[Cite as *Green v. Dept. of Rehab & Corr.*, 2002-Ohio-1980.]

continued to make threats and struggle during the escort. Each of the COs testified that plaintiff dragged his feet and refused orders to walk. Plaintiff claims that Sgt. Castle kicked his feet out from under him when he tried to walk.

Plaintiff was taken to a cell in Unit D1. He was then examined by a nurse due to his complaints of shoulder pain. The nurse provided plaintiff with pain medication and scheduled an appointment with a doctor.

Plaintiff claims that defendant's employees disregarded his mental illness and used excessive force in transferring him from Unit D3 to D1. Plaintiff further asserts that defendant negligently failed to give its COs adequate training and supervision in dealing with mentally ill inmates.

The Ohio Administrative Code sets forth the circumstances during which COs are authorized to use force against an inmate. Ohio Administrative Code 5120-9-01 provides:

(A) As the legal custodians of a large number of inmates, some of whom are dangerous, prison officials and employees are confronted with situations in which it is necessary to use force to control inmates. This rule identifies the circumstances when force may be used lawfully.

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(C) There are six general situations in which a staff member may legally use force against an inmate:

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(3) Controlling or subduing an inmate who refuses to obey prison rules and regulations;

[Cite as *Green v. Dept. of Rehab & Corr.*, 2002-Ohio-1980.]

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(D) Force or physical harm to persons shall not be used as prison punishment. This paragraph shall not be construed to affect or limit the disciplinary measures authorized in rules 5120-9-06 and 5120-9-07 of the Administrative Code.

(E) The superintendent, administrator, or staff member of a correctional institution is authorized to use force, other than deadly force, when and to the extent he reasonably believes that such force is necessary to enforce the lawful rules and regulations of the institution and to control violent behavior.

Plaintiff argues that under Ohio Administrative Code 5120-9-01 the use of force in his case was not authorized, because he did not commit an act of violence or threaten death or serious physical harm. Plaintiff's argument is not well taken.

Ohio Administrative Code 5120-9-01 (C)(3) authorizes COs to control or subdue inmates who refuse to obey the institution rules and regulations, including a direct order from a CO. Although plaintiff's version of the events in question differed from the testimony of the COs, plaintiff admitted that he used obscene language in response to CO Bolden's questions. Plaintiff's claim is that his statement was a reference to his mental status and that it was not intended as a threat. The claim lacks credibility. Moreover, it was reasonable for the COs to interpret plaintiff's statement as a threat, to restrain him, and to remove him from Unit D3 in order to control his behavior.

With regard to the cause of his alleged injury, plaintiff testified that both CO Bolden and Sgt. Castle injured him by

[Cite as *Green v. Dept. of Rehab & Corr.*, 2002-Ohio-1980.]

using an inappropriate escort technique. However, in plaintiff's June 1997 informal complaint he did not refer to CO Bolden's escort technique nor even allege that either of the COs purposefully kicked his feet out from underneath him. The court finds that plaintiff's testimony was not credible regarding the COs' escort procedure.

The court further finds no merit in plaintiff's claim that defendant negligently failed to adequately train its employees to interact with mentally ill inmates. There has been no showing that plaintiff was denied any required mental health attention or that his mental condition somehow contributed to his alleged mistreatment. Although plaintiff testified that he was diagnosed as a paranoid schizophrenic, he also testified that his mental illness did not prohibit him from understanding what he was doing at the time of the incident and that he understood that his statements to CO Bolden violated institution rules. Plaintiff's testimony that he abhors authority figures and can become violent when he is touched does not support his assertion that the COs lacked proper mental health training; rather, it is further evidence that the COs acted reasonably in restraining plaintiff once he became uncooperative. Therefore, defendant was not negligent in training or supervising its employees.

Based upon the foregoing, the court concludes that plaintiff has failed to prove, by a preponderance of the evidence, that defendant breached any duty of care owed to him. Judgment is recommended in favor of defendant.

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ANDERSON M. RENICK

[Cite as *Green v. Dept. of Rehab & Corr.*, 2002-Ohio-1980.]

**Magistrate**

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AMR/cmd  
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