

typically restraints are removed and inmates are permitted to receive hair cuts, exercise, or simply talk with one another for a period of one hour per day. In addition, no more than five inmates may be in the recreation cage at one time.

[Cite as *Williams v. Mansfield Corr. Inst.*, 2001-Ohio-6988.]

In this instance, the two officers were opening the recreation cage gate to permit plaintiff to enter when inmate Goodwin, a porter on the range, attacked plaintiff from behind with a sharpened eight-inch piece of metal commonly referred to as a "shank."

The officers closed the gate to the recreation cage when the attack occurred, locking plaintiff, who was still in restraints, in the cage with Goodwin who was still armed and unrestrained. Plaintiff testified that Goodwin continued to assault him inside the recreation cage.

The officers immediately initiated emergency procedures, including triggering the "man down" alarm. As a result of the alarm, additional corrections officers responded to the emergency situation to aid plaintiff.

Corrections Officer (CO) Tim Hicks testified that he was first to respond to the alarm. When he arrived at the recreation cage, he saw plaintiff attempting to avoid Goodwin's attack by crouching under a weight-lifting bench. CO Hicks ordered Goodwin to drop the shank and cease the attack. When Goodwin refused, CO Hicks sprayed him with pepper spray and he surrendered.

Plaintiff was given first aid and transported to the emergency room at Mansfield Medical Central Hospital for treatment. Plaintiff suffered multiple lacerations and contusions, including cuts to his neck, head and face. None of his injuries were life threatening and he was returned to the institution and placed on medical restriction.

In order for plaintiff to prevail on his claim of negligence, he must prove by a preponderance of the evidence that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Strother v.*

Hutchinson (1981), 67 Ohio St.2d 282, 285. Ohio law imposes a duty of reasonable care upon the state to provide for its prisoners' health, care and well-being. *Clemets v. Heston* (1985), 20 Ohio App.3d 132 at 136. However, the state is not an insurer of inmate safety. See *Williams v. Ohio Dept. of Rehab. & Corr.* (1991), 61 Ohio Misc.2d 699, at 702. Accordingly, the question for the court is whether defendant breached its duty of reasonable care under the circumstances of this case.

The law is well-settled in Ohio that the state is not liable for the intentional attack on one inmate by another unless there is actual or constructive notice of an impending assault. See *Baker v. State* (1986), 28 Ohio App.3d 99; *Williams v. Southern Ohio Corr. Facility* (1990), 67 Ohio App.3d 517; *Belcher v. Ohio Dept. of Rehab. & Corr.* (1991), 61 Ohio Misc.2d 696.

The distinction between actual and constructive notice has long been recognized. The distinction is in the manner in which notice is obtained or assumed to have been obtained rather than in the amount of information obtained. Whenever, from competent evidence, either direct or circumstantial, the trier of the facts is entitled to hold as a conclusion of fact and not as a presumption of law that the information was personally communicated to or received by the party, the notice is actual.

On the other hand, constructive notice is that which the law regards as sufficient to give notice and is regarded as a substitute for actual notice or knowledge. *In re Estate of Fahle* (1950), 90 Ohio App. 195, 197.

Plaintiff asserts that defendant was negligent in permitting Goodwin to be in the cellblock unrestrained while plaintiff was being placed into the recreation cage. Plaintiff further asserts

that defendant violated its own published post orders by permitting Goodwin to be on the range unrestrained.

Defendant conceded that the post orders prohibited inmates from being in the cellblock unrestrained. However, Goodwin was an inmate porter, which was a job that required him to run errands, clean cells, mop floors, and distribute and collect food trays. In order to perform that job, Goodwin was permitted to be on the range unrestrained.

There was conflicting testimony as to whether the range porter should have been secured in his cell when another inmate was being moved on the range and the post orders are silent on this issue. However, plaintiff has failed to prove by a preponderance of the evidence that defendant was negligent in failing to follow a specific written policy or procedure.

As to the issue of notice, inmate James R. Taylor, Sr., testified that he observed Goodwin talking to another inmate just prior to the attack. He testified that nothing Goodwin was doing was out of the ordinary and that the attack by Goodwin came as a complete surprise.

Additional testimony was introduced to show that in order for an inmate to become a porter, he must formally apply for the position and have a good institutional record. Goodwin had applied and, because of his good record, he was selected to be a range porter. He worked as a porter for two months without incident prior to the attack. Nothing was evident from Goodwin's immediate past to alert defendant that he was likely to attack another inmate.

Furthermore, plaintiff admitted on cross-examination that he had no prior indication that Goodwin would attack him. He knew

of no particular reason for Goodwin to assault him. Plaintiff also testified that, even if he did have reason to believe that he may be attacked, he would not have informed the prison administration.

Therefore, plaintiff has failed to prove by a preponderance of the evidence that defendant had either actual or constructive notice that Goodwin would attack him.

The remaining issue is whether defendant was negligent for locking plaintiff in with Goodwin. The evidence revealed that Goodwin continued his attack within the recreation cage and did not cease it until he was sprayed with pepper spray by CO Hicks.

Lieutenant Onray Smoot, a supervisor on duty the night of the incident, testified that defendant's safety policy prohibits COs from entering a closed area containing an armed inmate without sufficient back-up and equipment to control the situation. The policy is designed to prevent a CO from being injured or taken hostage. Smoot also testified that other officers promptly responded to the man down alarm and ended the assault within a reasonable time.

Defendant's safety policy that prohibits a CO without sufficient help from entering the recreation cage containing an armed inmate is clearly reasonable, given the obvious risks of harm or being taken hostage. See *Daniel Metcalf v. Ohio Dept. of Rehab. and Corr.* (Feb. 9, 2001), Court of Claims No. 99-11069, unreported.

Based upon the totality of the evidence, the court concludes that plaintiff has failed to prove an actionable claim of

[Cite as *Williams v. Mansfield Corr. Inst.*, 2001-Ohio-6988.]

negligence against defendant. Judgment is recommended in favor of defendant.

STEVEN A. LARSON
Magistrate

Entry cc:

Andre Williams, #A209-534
P.O. Box 788
Mansfield, Ohio 44901

Pro se

Eric A. Walker
65 East State St., 16th Fl.
Columbus, Ohio 43215

Assistant Attorney General

SAL/cmd
Filed 11-15-2001
To S.C. reporter 12-19-2001