

[Cite as *Stewart v. Ohio Dept. of Rehab. & Corr.*, 2002-Ohio-4134.]

IN THE COURT OF CLAIMS OF OHIO

JAMES L. STEWART :  
Plaintiff : CASE NO. 2000-10766  
v. : MAGISTRATE DECISION  
OHIO DEPARTMENT OF : Magistrate Holly True Shaver  
REHABILITATION AND CORRECTION :  
Defendant :  
: :

{¶1} This matter was tried to a magistrate of the court on the issue of liability. Plaintiff alleges a single cause of action sounding in negligence; specifically, that defendant’s employees allowed an environment to exist in which plaintiff was assaulted by another inmate, and that the manner in which defendant’s employees ended the assault contributed to plaintiff’s injuries.

{¶2} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant at the Madison Correctional Institution (MCI) pursuant to R.C. 5120.16. MCI is a minimum-security facility, where inmates are housed in dormitory-style cubicles separated by partitions. On April 6, 2000, plaintiff was housed in a dormitory known as “Monroe-C” that housed approximately 124 inmates. Monroe-C is adjacent to Monroe-D dormitory. The two dormitories are separated by offices and multi-purpose rooms. One corrections officer (CO) per shift was assigned to each dormitory.

{¶3} Plaintiff testified that after the 11:00 a.m. count he was in his cubicle waiting to go to chow, when he heard the phone

ringing at the CO's desk for approximately 15 to 20 minutes. He asserts that CO Natalie Westmoreland was on duty at that time but was not at the desk in the Monroe-C dayroom. Plaintiff further asserts that he became concerned about Westmoreland's whereabouts, and that he began to investigate whether she was in Monroe-D.

{¶4} Plaintiff opened the door from the Monroe-C dayroom to the outdoor recreation area. Inmate Robert Chambers, also known as Abdullah Ibraheem, was seated at a table near the door where he was using a typewriter. Chambers told plaintiff to shut the door because the wind was blowing his papers around. Plaintiff stated that he and Chambers had a "stare-down," because plaintiff was offended by the way that Chambers had told him to shut the door. After a few moments, plaintiff walked towards the telephone room of the dormitory to talk to another inmate. Chambers gathered his things and left the area.

{¶5} A few minutes later, Chambers returned to the dayroom and said something like, "Let's take it to the gymnasium to finish this." Plaintiff replied, "I'm standing here if you want some of me." An assault ensued, wherein plaintiff and Chambers ended up on the floor of the dormitory hallway near the dayroom, with approximately 20 to 30 inmates crowded around them watching the fight. Plaintiff testified that he heard CO Westmoreland and Sergeant Terry Campbell order them to stop fighting, but that the fight continued because Chambers was choking him; that it was difficult for plaintiff to breathe and he lost control of his bowels during the fight; that a CO grabbed plaintiff and was pulling on him for three to five minutes in an attempt to separate him from Chambers; and that plaintiff was yelling that Chambers had his ear. Once plaintiff and Chambers were separated, it became apparent that

Chambers had bitten off a piece of plaintiff's ear. Plaintiff testified that he had not had any prior problems with Chambers and that Chambers had not made any threats toward plaintiff prior to the assault.

{¶6} Jerry Munguia was plaintiff's bunkmate at the time. He testified that he was in the shower area when the fight started and that he saw plaintiff and Chambers scuffling and looked out the window of the shower area to see if Westmoreland was present but did not see her. However, Munguia conceded that he was not able to see the entire dormitory through the window. He further stated that approximately three minutes passed between the start of the fight and the time that Westmoreland arrived at the scene.

{¶7} Donald Hess, an inmate who was housed in Jefferson-A dormitory on the day of the incident, found out about the assault after it happened. He testified that Monroe-C usually went to chow two dormitories ahead of Jefferson-A, but on the day of the fight, his dormitory ate before Monroe-C ate.

{¶8} Inmate Edward Clark was in the area when the fight began and broke through the crowd to see the fight. According to Clark, officers did not arrive at the scene until approximately ten or twenty minutes after the scuffle began, and Westmoreland was not at her post when the fight began. Clark also stated that plaintiff's face changed color from red to blue, that plaintiff looked like he was choking and appeared lethargic. Clark described the event as a traumatic assault. He further testified that he was friends with both plaintiff and Chambers and was surprised that they fought because he knew of no prior problems between them.

{¶9} Inmate Roy Mays was ironing in the dayroom prior to the fight. He recalled that plaintiff was talking to another inmate

through the door leading to the recreation area and that Chambers told plaintiff to shut the door. He described them as talking aggressively to one another. He saw Chambers go back to his cubicle with his typewriter and return two or three minutes later. Mays stated that Westmoreland was sitting at her desk when the fight broke out and that he and CO Michael Seitz broke up the fight before Sgt. Campbell arrived.

{¶10} Timothy L. Follrod testified that he had been a CO for fourteen and one-half years and that he was assigned as a yard officer on the day of the incident. He responded to a man-down alarm from the control center. He and CO Seitz used a "gator," described as a four-wheel-drive golf cart, to get to Monroe-C from the yard. He estimated that it took him approximately ten to twelve seconds to get from the yard to the dormitory. When Follrod arrived, he saw Sgt. Campbell, drug counselor Hurrell and a crowd of approximately 50 or 60 inmates. He described the fight as a life-threatening situation. Chambers and plaintiff were eventually separated. Plaintiff was unconscious, his face was blue and he was bleeding. Follrod lifted plaintiff from the floor and took him out the emergency exit to the infirmary.

{¶11} Michael Seitz testified that he had been a CO for 15 years and that he was working as the Zone B yard officer on the day of the incident. He was in the Zone B chow hall when he responded to the man-down alarm. When he arrived, he saw Sgt. Campbell on the floor with plaintiff and Chambers. He worked with Campbell to roll Chambers onto his belly and place him in handcuffs. Seitz stated that it took approximately one to one and a half minutes to break up the fight. He described plaintiff as being "almost choked out." He saw Chambers spit out part of plaintiff's ear. He further stated

that Westmoreland was in the dayroom by the phone area, helping with the crowd and that he was very concerned about the crowd of inmates watching the fight.

{¶12} Sgt. Terry Campbell testified that on the day of the assault he was a corrections counselor whose main duty it was to supervise other COs. His office was in Monroe-D. When he heard the man-down alarm, he ran into Monroe-C where he saw CO Westmoreland in the dayroom holding back a crowd of inmates. He saw plaintiff and Chambers lying on the floor wrestling. Inmate Mays was trying to break up the fight. Campbell tried to pull Chambers off of plaintiff and in doing so, Campbell ripped the hood off of Chambers' sweatshirt. Campbell and Seitz were eventually able to place Chambers in handcuffs. Campbell filed a use of force report detailing the fight after the incident. (Plaintiff's Exhibit 13.)

{¶13} Natalie Westmoreland testified that she had been a CO for eight years and was assigned to Monroe-C on first shift on the day of the incident. She stated that at about 11:50 a.m., she left her desk and took inmate Mason to Sgt. Campbell's office regarding a conduct ticket that she had written. (Defendant's Exhibit D.) Sgt. Campbell listened to her complaints about Mason's conduct, read the ticket and asked inmate Mason some questions in her presence. She spent two to five minutes with Sgt. Campbell but she did not make a notation of it in her log book. She testified that she returned to her desk after speaking to Sgt. Campbell.

{¶14} According to Westmoreland, she was at the desk before the incident occurred. A group of inmates were waiting in the dayroom to be called to chow. She observed plaintiff and Chambers pushing each other and ordered them to stop but they continued, so she activated the man-down alarm and waited for assistance. Sgt.

Campbell was the first officer to arrive and he grabbed Chambers. Other officers arrived and Westmoreland moved out of the way. She stated that it took one or two minutes for the fight to be broken up.

{¶15} In order for plaintiff to prevail upon 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. In the context of a custodial relationship between the state and its prisoners, the state owes a common law duty of reasonable care and protection from unreasonable risks. *McCoy v. Engle* (1987), 42 Ohio App.3d 204, 207. Reasonable or ordinary care is that degree of caution and foresight which an ordinarily prudent person would employ in similar circumstances. *Smith v. United Properties, Inc.* (1985), 2 Ohio St.2d 310.

{¶16} 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 adequate notice of an impending assault. See *Baker v. State* (1986), 28 Ohio App.3d 99; *Williams v. S. Ohio Correctional Facility* (1990), 67 Ohio App.3d 517; *Belcher v. Ohio Dept. of Rehab. and Corr.* (1991), 61 Ohio Misc.2d 696. The legal concept of notice comprises two distinguishable types, actual and constructive. See *In re Estate of Fahle* (1950), 90 Ohio App. 195, 197.

{¶17} Plaintiff has not shown that defendant had notice of Chambers' intent to assault him. No one knew of any prior problem between plaintiff and Chambers and even plaintiff testified that he had no prior problems with Chambers.

{¶18} There was conflicting testimony on the issue of whether CO Westmoreland was present at her desk in Monroe-C when the fight

began. The court finds that plaintiff's testimony regarding the length of time that the phone was ringing and his intent to find CO Westmoreland was not credible. Moreover, the fact that Monroe-C went to chow out of order that day does not prove that Westmoreland was away from her desk for 15 to 20 minutes. However, assuming, arguendo, that CO Westmoreland was not at her desk when the fight began, the issue for this court to decide is whether her absence from the desk constitutes a breach of defendant's duty of reasonable care.

{¶19} Campbell stated that a dorm officer's duties include maintaining the safety and security of inmates and staff, making rounds, sending inmates to their jobs, and logging passes in and out. He stated that dorm officers are not expected to be sitting at the desk at all times during their shifts because they must make rounds, and a CO is permitted to leave the dorm unattended for a short period of time. He further stated that COs are trained to activate the man-down alarm and wait for assistance from other officers when an inmate fight occurs, because of the risk that the fight could escalate into an assault on the CO if only one officer is present. He also stated that an inmate who walks to another dorm without permission is "out of place."

{¶20} Captain Dunsmore, the Corrections Captain since 1996, stated that the dorm officers' duties are to maintain safety, security and sanitation in the living unit to which they are assigned. He testified that at MCI, inmates may go to the recreation yard from 8:00 to 11:00 a.m., but that they are required to sign out before they leave the dorm, and that plaintiff would have been out of place if he was leaving his dorm to find Westmoreland. He stated that if there is only one officer present

when a fight begins, the officer should give a verbal command to stop the fighting and then activate the man-down alarm and wait for help. He further stated that it is important to control the crowds of inmates that form when a fight occurs.

{¶21} Plaintiff testified that he and Chambers had a stare-down regarding the incident involving the door. In addition, the words that were exchanged after the stare-down demonstrate to the court that plaintiff was willing to fight Chambers in the dayroom. Thus, even if Westmoreland had been required to stay at her desk, plaintiff has not shown by a preponderance of the evidence that her presence at the desk would have prevented him from fighting with Chambers.

{¶22} Furthermore, the court is persuaded by the testimony of Campbell and Dunsmore that Westmoreland followed defendant's procedure once the fight began. Her activation of the man-down alarm while waiting for assistance and attempting to control the crowd of inmates was the proper protocol. Therefore, plaintiff has failed to prove that defendant breached its duty of care to him.

{¶23} Additionally, plaintiff's claim that COs were negligent in the technique used to break up the fight is without merit. Chambers had plaintiff in a choke-hold, and witnesses testified that plaintiff's face was blue and that the assault was so intense that he lost control of his bowels. The court finds that the actions of trying to separate plaintiff from Chambers were done in an attempt to prevent further harm to plaintiff. Moreover, the greater weight of the evidence shows that plaintiff's words to Chambers immediately prior to the fight demonstrate his willingness to participate in the fight with Chambers. Accordingly, defendant did not breach any duty of care owed to plaintiff.

{¶24} In the final analysis, plaintiff has failed to prove his claim of negligence by a preponderance of the evidence. Accordingly, judgment is recommended in favor of defendant.

---

HOLLY TRUE SHAVER  
Magistrate

Entry cc:

Richard F. Swope  
6504 East Main Street  
Reynoldsburg, Ohio 43068

Attorney for Plaintiff

Anne Berry Strait  
65 East State St., 16th Fl.  
Columbus, Ohio 43215

Assistant Attorney General

HTS/cmd  
Filed 7-3-2002  
To S.C. reporter 8-12-2002