

{¶4} Plaintiff stated that when he complained that he continued to experience pain at the dormitory, he was taken to the infirmary for an evaluation. During his examination, plaintiff informed a nurse that his pain resulted from being “pushed around.” Plaintiff said that he returned to his dormitory later that afternoon, and that several days later he sought medical attention when he experienced symptoms which included dizziness, poor vision, and rectal bleeding. CO Westmoreland escorted plaintiff to the infirmary where he was examined and subsequently transferred to a local hospital. Plaintiff was also treated at Corrections Medical Center (CMC) and the Ohio State University Medical Center (OSUMC).

{¶5} At the time of the incident, Lieutenant Baker had been a CO at MCI for approximately eight years and a corrections lieutenant for approximately three years. Her duties included supervising COs and conducting institutional investigations. Lieutenant Baker gave the following testimony regarding the events of August 17, 2001. On that date, Lieutenant Baker was supervising an area that included the dining hall when she heard plaintiff talking loudly and cursing. Lieutenant Baker testified that plaintiff initially did not respond when she ordered him to exit the line, and that when he did not comply with her order to calm down, she ordered two COs to place him in handcuffs. According to Lieutenant Baker, plaintiff was causing a commotion and the situation was “getting out of hand.” As the COs cuffed plaintiff behind his back, he began to complain that he had a back problem and tried to bend his knees. Lieutenant Baker directed the COs to reposition the cuffs so that plaintiff’s arms were in front of him. After plaintiff became quiet, Lieutenant Baker ordered that the handcuffs be removed and that he be sent to the infirmary due to his complaints of a back problem. Lieutenant Baker testified that she did not send plaintiff to a segregation cell and that she did not order him to dispose of his food.

{¶6} The second alleged incident of excessive force occurred on November 10, 2001, when plaintiff was a patient at CMC. According to plaintiff, CO Frederick Taylor and another CO entered his cell and awakened him to conduct a “shakedown” by looking around the cell and inspecting beds for contraband. Plaintiff stated that when he informed CO Taylor that he was unable to get out of his bed, Taylor ignored his complaint and ordered him to get up. Plaintiff further testified that he fell

when he attempted to stand up. Plaintiff alleges that CO Taylor unjustly charged him with creating a disturbance, and injured plaintiff's feet by scraping them against the floor as the CO used a wheelchair to take him to the shift captain's office. After plaintiff talked to the shift captain about the conduct report, he was sent back to his cell.

{¶7} CO Taylor testified that his duties at CMC included performing two random shakedowns each shift. According to CO Taylor, plaintiff became hostile and began yelling during the search. As he conducted the search, CO Taylor asked plaintiff if he had any weapons or drugs. CO Taylor testified that plaintiff responded by stating "yeah, I have a fucking pistol" and that he continued to be belligerent. When plaintiff disobeyed his order to "quiet down," CO Taylor ordered him to get into a wheelchair. CO Taylor testified that plaintiff complained of stomach pain during a pat-down for weapons. Plaintiff was examined by a nurse, handcuffed, and escorted to the captain's office. CO Taylor testified that he did not recall observing plaintiff's feet scrape the floor and he denied that plaintiff exclaimed that he was in pain when he was pushed in the wheelchair.

{¶8} CO Christopher Bowman also testified regarding the events of November 10, 2001. On that date, he went to plaintiff's cell to conduct a routine shakedown and observed that plaintiff became irate when the COs began to search the area. CO Bowman corroborated CO Taylor's testimony that plaintiff cursed and initially refused to comply with the search. CO Bowman testified that plaintiff slumped to the floor when he was ordered to get out of his bed and that medical staff responded to assist plaintiff. CO Bowman further testified that CO Taylor did not strike plaintiff.

{¶9} As a preliminary matter, the court will address plaintiff's allegations regarding violations of the Ohio criminal code. Pursuant to R.C. 2931.03, "[t]he court of common pleas has original jurisdiction of all crimes and offenses, except in cases of minor offenses the exclusive jurisdiction of which is vested in courts inferior to the court of common pleas." This court was created pursuant to R.C. 2743.03, and has exclusive, original jurisdiction of all *civil* actions against the state permitted by the waiver of immunity contained in R.C. 2743.02. R.C. 2743.02 does not confer jurisdiction to this court to consider criminal charges that should be adjudicated in courts of common pleas. *Donaldson v. Court of Claims* (May 19, 1992), Franklin App. No. 91AP-1218.

“Without question, a court that is statutorily created has no jurisdiction except that granted by statute.” *State v. Human* (1978), 56 Ohio Misc. 5, 8. Accordingly, this court has no jurisdiction over alleged criminal violations by defendant’s employees.

{¶10} Additionally, to the extent that plaintiff raises constitutional claims regarding his rights under the Fifth Amendment, it has been consistently held that this court is without jurisdiction to consider claims for relief premised upon alleged violations of either the Ohio or United States Constitution. See, e.g., *Graham v. Ohio Bd. of Bar Examiners* (1994), 98 Ohio App.3d 620; *Burkey v. Southern Ohio Correctional Facility* (1988), 38 Ohio App.3d 170.

{¶11} The crux of plaintiff’s remaining claims is that defendant’s employees used excessive force against him and that defendant’s disregard for his age and health constitutes “gross negligence.” In order to prevail on a negligence claim, plaintiff must prove by a preponderance of the evidence that defendant owed him a duty, that it breached such duty, and that the breach proximately caused plaintiff’s 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 prisoner’s health, care and well-being. *Clemets v. Heston* (1985), 20 Ohio App.3d 132, 136.

{¶12} Ohio Adm.Code 5120-9-01 sets forth the circumstances in which force may be lawfully utilized by prison officials and employees in controlling inmates. Ohio Adm.Code 5120-9-01(C) states, in relevant part:

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

{¶14} “****

{¶15} “(3) Controlling or subduing an inmate who refuses to obey prison rules and regulations; ****”

{¶16} This court has previously noted that “corrections officers have a privilege to use force upon inmates under certain conditions. *** However, such force must be used in the performance of official duties and cannot exceed the amount of force which is reasonably necessary under the circumstances. *** Force may be used to control or subdue an inmate in order to enforce the

institution's rules and regulations. *** Obviously, 'the use of force is a reality of prison life' and the precise degree of force required to respond to a given situation requires an exercise of discretion by the corrections officer." *Mason v. Ohio Dept. of Rehab. & Corr.* (1990), 62 Ohio Misc.2d 96, 101-102. (Citations omitted.)

{¶17} With regard to the August 17, 2001, incident, plaintiff offered the testimony of several inmates who were present in the dining hall at the time of the incident. The witnesses who observed the scene prior to Lieutenant Baker's involvement testified either that the dining hall was loud or that there was a commotion before plaintiff was ordered out of the serving line. The other inmate witnesses acknowledged that they did not observe the events that precipitated the incident. Although plaintiff's version of the incident differs from that of defendant's employees, the testimony at trial established that Lieutenant Baker responded to a disturbance in the serving line. Indeed, the court finds that Lieutenant Baker had a duty to respond to the incident and to maintain control in the dining hall. The court further finds that it was reasonable for Lieutenant Baker to have plaintiff removed from the area in order to restore order in the dining hall.

{¶18} Furthermore, the medical evidence does not support plaintiff's assertion that his alleged injuries were caused by defendant's employees. Carolyn Galloro, a nurse who works at the MCI infirmary testified regarding plaintiff's medical record. Nurse Galloro reviewed a "medical exam report" that was completed on August 17, 2001, as a result of a use-of-force evaluation. (Defendant's Exhibit D.) The report lists plaintiff's subjective complaint as "my back hurt." Nurse Galloro noted that no marks or injuries were observed on plaintiff's wrists and that plaintiff was able to move his wrists in a full range of motion without pain or discomfort. The examining nurse noted that plaintiff experienced "possible lower back pain." Plaintiff's medical records also show that despite plaintiff's report of back pain, he was able to stand and ambulate without difficulty. (Defendant's Exhibit E.) Nurse Galloro also noted that plaintiff was examined on August 20, and referred to a local hospital for evaluation of any rectal bleeding. Plaintiff's medical records from the OSUMC report that he was diagnosed with "mild gastritis" and that a colonoscopy performed in

August 2001 showed that plaintiff was diagnosed with hemorrhoids. (Defendant's Exhibit H.) The court finds that plaintiff failed to establish that defendant's alleged negligence caused any injuries.

{¶19} Regarding the November 10, 2001, incident, plaintiff did not offer any evidence other than his own testimony to show that he was injured by defendant's employees on that date. After plaintiff complained of stomach pain during a pat-down search, defendant's nurse examined him but did not detect any injury. The court finds that plaintiff's testimony concerning the November 10, 2001, incident was not credible, but that the testimony of COs Taylor and Bowman that plaintiff refused to cooperate during the shakedown was consistent and credible.

{¶20} Based upon the totality of the evidence presented and assessing the credibility of the witnesses, the court is persuaded that plaintiff's conduct on both August 17, 2001, and November 10, 2001, required intervention by defendant's employees. The court is further persuaded that the COs did not violate the provisions of Ohio Adm.Code 5120-9-01 in their efforts to control plaintiff. Specifically, the court finds that the COs used only the amount of force that was reasonably necessary to enforce the lawful rules and regulations of the institution and to control an inmate who refused to obey a direct order.

{¶21} For the foregoing reasons, the court concludes that plaintiff failed to prove any of his claims by a preponderance of the evidence. Accordingly, judgment is recommended in favor of defendant.

{¶22} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the court's adoption of any finding or conclusion of law contained in the magistrate's decision unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).*

STEVEN A. LARSON
Magistrate

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Filed August 6, 2004

To S.C. reporter August 30, 2004