

[Cite as *Gladden v. Grafton Correctional Inst.*, 2004-Ohio-7301.]

IN THE COURT OF CLAIMS OF OHIO

FRED GLADDEN :

Plaintiff : CASE NO. 2003-12191
Judge Fred J. Shoemaker
v. : Magistrate Steven A. Larson

GRAFTON CORRECTIONAL : MAGISTRATE DECISION
INSTITUTION :

Defendant :

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{¶ 1} Plaintiff brought this action alleging that defendant was negligent in failing to prevent one of its employees, Corrections Officer (CO) Barry Smith, from using unnecessary force against him during a pat-down search. The issues of liability and damages were bifurcated and on October 19, 2004, the case proceeded to trial at Grafton Correctional Institution (GCI) on the issue of liability and the civil immunity of CO Smith.

{¶ 2} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. Plaintiff has alleged that while leaving the chow hall on March 27, 2003, CO Smith was overly aggressive during a pat-down search and that CO Smith's unlawful contact with plaintiff's groin area caused broken blood vessels, swelling, and excruciating pain.

{¶ 3} According to plaintiff, he was ordered to put his hands on the wall and spread his legs, whereupon CO Smith aggressively patted down his chest and abdomen, and then grabbed plaintiff's underwear and pants, pulling them upward into his buttocks with such force that plaintiff's heels came off the floor. Plaintiff

testified that after CO Smith patted down his ankle, he came straight up his leg and struck him in the testicles.

{¶ 4} Plaintiff stated that he almost fell to the floor from the pain and that he asked CO Smith why he hit him. According to plaintiff, CO Smith smirked and walked away. Plaintiff walked back to his dorm, but reported to sick call one hour later because of pain.

{¶ 5} Upon returning to the dorm after sick call, plaintiff was instructed by another CO to fill out an incident report at the captain's office. Plaintiff filed the report and again returned to his dorm where two inmates advised him to talk to Connie Cook, the duty officer. Plaintiff testified that when he went to speak with CO Cook, she was involved in a conversation with another CO; and that he walked back to his dorm instead of waiting because he was in a great deal of pain.

{¶ 6} According to plaintiff, he was prescribed pain relief medication when he went to sick call on the day of the incident and was instructed to return if pain persisted. Two days later, plaintiff returned to the infirmary where he was prescribed more pain medication. The nurse also gave plaintiff a groin support device and told him to apply ice to the area. Plaintiff received a pass to see a doctor. On March 31, 2003, plaintiff used his pass to go to the medical station but when he arrived he was told that he could not see the doctor until April 2. On that day, the doctor wrote a 30-day prescription for indomethacin, a medication for pain and swelling.

{¶ 7} Plaintiff sent two "kites" to the Ohio State Highway Patrol (OSHP) requesting that they investigate the pat-down incident. OSHP Trooper Scott Widder was assigned to investigate

plaintiff's allegations. During the investigation, plaintiff did not provide the names of any witnesses to the incident. Trooper Widder testified that in the initial incident report, he listed the offense as an assault because plaintiff's allegation placed the offense in that category. (Plaintiff's Exhibit 2.) Although Trooper Widder did not believe there was sufficient evidence to conclude that an assault had occurred, he felt it necessary to speak with a prosecutor. According to Trooper Widder, the prosecutor did not take the case because no intent to harm or injure could be shown.

{¶ 8} Inmate Pablo Soto testified that on March 27, 2003, he was working in the chow hall for the evening meal, that he was about five feet from where the search of plaintiff occurred, and that he had a clear view of the incident. According to inmate Soto, the pat-down was very aggressive and ended with CO Smith's striking plaintiff in the testicle area. Prior to the pat-down, inmate Soto did not see plaintiff acting aggressively or making any abrupt movements. After the pat-down, plaintiff and CO Smith exchanged a few words, then plaintiff exited the chow hall. Inmate Soto said that due to the din in the hall, he could not hear the words that were exchanged. On cross-examination, inmate Soto admitted that he never reported the incident and did not speak to Trooper Widder during the OSHP investigation.

{¶ 9} Inmate William Thomas stated that he was sitting about 8-10 feet away from plaintiff during the March 27, 2003, incident. He testified that during the pat-down, plaintiff was cooperative and did not struggle with CO Smith. According to inmate Thomas, CO Smith hit plaintiff between his legs and they had words before plaintiff left the chow hall. On cross-examination, inmate Thomas

admitted that he did not come forward as a witness to the incident and that plaintiff did not ask him to speak with Trooper Widder. Inmate Thomas also testified that inmates take contraband from the chow hall and that it is common for COs to pat-down inmates as they are leaving the hall. Additionally, he admitted that inmates do hide contraband in their groin area.

{¶ 10} At the time of the incident, Barry Smith had been a CO at GCI for approximately ten years. His duties as a CO included supervising inmates, maintaining security within the institution and conducting random pat-downs of inmates as they exited the chow hall. CO Smith testified that on the day of the incident, he conducted roughly 40 pat-downs during the evening meal. CO Smith stated that pat-downs are used to search for hidden contraband and to maintain safety in the institution.

{¶ 11} CO Smith testified that he had been trained in the proper pat-down procedure during his initial training at the Correctional Training Academy in Columbus and that additional on-the-job training was provided by the institution throughout his career. CO Smith described the pat-down as a routine pat-down for the purpose of self-protection and safety.

{¶ 12} CO Smith stated that he followed the same pat-down procedure with all inmates: first the inmate is told to stand against the wall and spread his legs, next the CO pats him down beginning at the collar and moving to his shoulders, each arm, the small of the back, around the belt and front, and finally down each leg. CO Smith said that he never struck plaintiff in the testicles and that he did not pull plaintiff's pants and underwear into his buttocks during the pat-down of plaintiff.

{¶ 13} Darlene Krandall, the institution inspector at GCI for the past 12 years, conducted the investigation of plaintiff's April 11, 2003, grievance. Inspector Krandall spoke with numerous witnesses and staff and, on April 24, 2003, concluded the following in the disposition of grievance: "*** I could find no witnesses that saw or heard anything inappropriate during this alleged incident. You received a medical exam after you reported it and no abnormal physical findings were noted. *** I've had witnesses comment during this investigation how they have witnessed you walking across the yard like you are in great discomfort, but when you feel you are out of sight from related staff, you act and walk normally. *** no conclusive evidence to support your allegations against Officer Smith. ***." (Defendant's Exhibit E.)

{¶ 14} At the time of the incident, Eddie Young had been an investigator at GCI for 15 years. Mr. Young stated he was required to conduct the in-service training at GCI, which covers proper pat-down procedures. He testified that the most important element of a pat-down is a CO's personal safety, and that he taught COs to make a careful search of the groin area because this is one of the many places contraband is hidden. According to Mr. Young, a CO's post orders include conducting random pat-downs of inmates exiting the chow hall because it is a high risk area for stolen contraband, including knives and other weapons. Mr. Young first became involved with the investigation of the March 27, 2003, incident when he was stopped by plaintiff in the yard and asked about having OSHP conduct an investigation. Mr. Young was present during a portion of plaintiff's interview with Trooper Widder. During that interview, Trooper Widder asked plaintiff if he wanted to press charges against CO Smith and plaintiff declined.

{¶ 15} 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.

{¶ 16} In considering the conflicting testimony of the witnesses, the court finds the testimony of CO Smith to be the more credible. Specifically, the court is persuaded that CO Smith was properly trained in appropriate pat-down procedure, that on March 27, 2003, he conducted a routine pat-down, and that he did not strike plaintiff in the testicles. Additionally, plaintiff's credibility regarding his version of the March 27, 2003, incident was undermined by the testimony of Trooper Widder and Inspector Krandall, wherein both investigators reported that there was insufficient evidence of an assault and that after the incident no physical injury could be shown.

{¶ 17} Based upon the totality of the evidence presented and assessing the credibility of the witnesses, the court finds that plaintiff failed to prove that any unreasonable force was used by CO Smith on March 27, 2003. The weight of the evidence demonstrates that the pat-down was routine and that there was no physical injury, despite plaintiff's complaints of pain.

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

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MAGISTRATE DECISION

LM/cmd

Filed December 20, 2004

To S.C. reporter January 11, 2005