

# Court of Claims of Ohio

The Ohio Judicial Center  
65 South Front Street, Third Floor  
Columbus, OH 43215  
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MICHAEL THORNE

Plaintiff

v.

SOUTHERN OHIO CORRECTIONAL FACILITY, et al.

Defendants

Case No. 2006-07791

Judge J. Craig Wright  
Magistrate Steven A. Larson

## MAGISTRATE DECISION

{¶ 1} Plaintiff brought this action alleging excessive force by defendants. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶ 2} At all times relevant, plaintiff was an inmate in the custody and control of defendants pursuant to R.C. 5120.16. On the night of November 30, 2006, plaintiff blocked his toilet, which caused water to cover the floor of his cell and the surrounding area. Plaintiff alleges that the corrections officer who responded sprayed him with mace four times without cause before placing him in handcuffs and removing him from his cell. Plaintiff testified that as he was being led away from his cell, his pants fell down which caused him to trip. Plaintiff stated that he was then sprayed with mace again, hit on the back of his head with the container of mace and thrown against the metal doors leading to the segregation range, "J2." Plaintiff further testified that he was forced to remain in a J2 "suicide cell" through the night and that he was not permitted to take a shower or given clean clothes until morning.

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

{¶ 4} “(2) Less-than-deadly force. There are six general circumstances in which a staff member may use force against an inmate or third person. A staff member may use less-than-deadly force against an inmate in the following circumstances:

{¶ 5} “(a) Self-defense from physical attack or threat of physical harm;

{¶ 6} “(b) Defense of another from physical attack or threat of physical attack;

{¶ 7} “(c) When necessary to control or subdue an inmate who refuses to obey prison rules, regulations or orders;

{¶ 8} “(d) When necessary to stop an inmate from destroying property or engaging in a riot or other disturbance;

{¶ 9} “(e) Prevention of an escape or apprehension of an escapee; or

{¶ 10} “(f) Controlling or subduing an inmate in order to stop or prevent self-inflicted harm.”

{¶ 11} The court has recognized 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. \* \* \* 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. (Internal citations omitted.)

{¶ 12} Corrections Sergeant Preston Messer testified that he went to plaintiff’s cell on November 30, 2006, in response to reports that plaintiff was “flooding the range.” According to Messer, he and Corrections Officer (CO) Bailey approached plaintiff’s cell and ordered him to “cuff-up.” Messer stated that plaintiff responded by throwing toilet

water on them, at which time another CO on the scene maced plaintiff. Messer testified that plaintiff was again ordered to cuff-up but when he threw more toilet water on the COs, he was maced a second time. After a third order to cuff-up, plaintiff complied.

{¶ 13} According to Messer, after plaintiff was placed in handcuffs, he became increasingly uncooperative; at one point sitting on the floor and telling COs that they would have to drag him from the range. Messer stated that when he ordered plaintiff to stand, plaintiff's response was "fuck you, carry me," after which plaintiff turned to spit on Messer and Messer administered a short burst of mace. Messer testified that he was then able to stand plaintiff up and place him against a wall to secure him before taking him to J2. Messer further testified that as he and another CO escorted plaintiff down the hall toward J2, plaintiff's pants fell down and plaintiff tripped, causing plaintiff, Messer, and the CO to fall to the floor. According to Messer, after standing plaintiff up again, he was placed in a "holding cage" on "constant watch," without further incident. Finally, Messer testified that minimal force was used as necessary during the incident, that plaintiff was maced in accordance with defendants' policy, and that plaintiff did not suffer any visible injury as a result of the force used.

{¶ 14} The court finds that plaintiff was less than credible in describing the events of November 30, 2006, and that the testimony provided by Messer was more believable. Based upon Messer's testimony, the court finds that the force used to subdue plaintiff, to remove him from his cell, and to escort him to J2 was not excessive. Accordingly, judgment is recommended in favor of defendants.

*A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).*

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STEVEN A. LARSON

Case No. 2006-07791

- 4 -

MAGISTRATE DECISION

Magistrate

cc:

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Magistrate Steven A. Larson

MR/cmd  
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