

IN THE COURT OF CLAIMS OF OHIO

LAWRENCE BURFITT

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2024-00766JD

Magistrate Robert Van Schoyck

DECISION OF THE MAGISTRATE

{¶1} Plaintiff, an inmate in the custody and control of defendant, brought this action for assault, battery, and negligence, claiming that corrections officers used excessive force against him on April 23, 2024, at Toledo Correctional Institution. The case proceeded to trial before the undersigned magistrate. As explained below, judgment is recommended for defendant.

{¶2} (As a preliminary matter, plaintiff’s January 13, 2026 motion for appointment of counsel is DENIED, as “litigants do not have a right to counsel in civil cases, like here, that do not involve the state seeking to take an individual’s life, liberty or property.” *Hanna v. Ohio Dept. of Rehab. & Corr.*, 2009-Ohio-5094, ¶ 10 (10th Dist.).)

Summary of Testimony

{¶3} Describing what led up to the incident, plaintiff testified that he did not get along with one of the officers assigned to his housing unit, Corrections Officer Emily Osborne, and he particularly disagreed with a Conduct Report that she issued to him prior to the incident, charging him with violating prison rules.

{¶4} In an effort to have prison officials relocate him away from Osborne, plaintiff stated, on the day of the incident he refused to leave his cell, he cut himself, smeared blood on his door, and declared that he was suicidal. Plaintiff testified that several corrections officers responded to his cell, and although he initially barricaded the door with a mattress he eventually removed it and submitted to being handcuffed and escorted away.

{¶5} At one point during the escort, plaintiff recounted, a corrections officer directed him to the wall and twisted his arms up, while he remained in handcuffs, causing him to feel some pressure or pain in one of his pinkie fingers. Subsequently, two other officers took over the escort and led him away, plaintiff recalled.

{¶6} Plaintiff acknowledged having seen a video of the incident and admitted that it showed him shouting quite a bit and verbally threatening Corrections Officer Osborne, and that the officers escorting him ordered him to stop several times. Plaintiff also acknowledged that he admitted before the Rules Infraction Board that he committed several rules violations with which he was charged as a result of the incident, including physical resistance of a direct order and threatening bodily harm to another.

{¶7} Corrections Officer Brandon Hairabedian testified that he has worked at Toledo Correctional Institution for about ten years. Hairabedian stated that on April 23, 2024, he was one of several officers sent to plaintiff's cell due to plaintiff being considered suicidal. Hairabedian recalled that, when he arrived at the cell, plaintiff was agitated in a general sense but not particularly toward the staff members at the cell. After plaintiff eventually agreed to exit the cell and be placed in handcuffs, Hairabedian stated, he and another officer started escorting plaintiff to another area of the facility. According to Hairabedian, plaintiff made verbal threats during the escort and eventually planted his feet and thrashed his upper body in what felt like an attempt to break free from the escort, at which point Hairabedian and his partner directed plaintiff to a wall to gain better control of him. Hairabedian testified that his partner placed plaintiff in a PR-24 escort position, which involves placing the handle of a PR-24 baton between an inmate's wrists when handcuffed behind their back and having the long end of the baton between the shoulder blades, as to gain control of the inmate's torso. Hairabedian testified that he has been trained on how to use the PR-24 and felt that its use in this incident was consistent with his training.

{¶8} Hairabedian testified that he and other officers also receive training regularly on the use of force, and he described some of the situations when force may be used and how officers are trained to use the least amount of force necessary. In this situation, Hairabedian stated, the force that he and his partner used was to protect themselves and

others from harm. Hairabedian stated that he observed no injuries on plaintiff and did not hear plaintiff complain of any injury.

{¶9} Hairabedian testified that he and other staff had body-worn cameras and he authenticated a video taken from one of their cameras. (Defendant's Exhibit D-1.) Hairabedian also testified that when officers use force, they are required to document the incident in a Use of Force Report and he authenticated a copy of the Use of Force Report that he prepared for this incident. (Defendant's Exhibit A, pp. 4-5.)

{¶10} Corrections Officer Benjamin Materni testified that he has worked at Toledo Correctional Institution for nine years. Materni stated that on April 23, 2024, he was called to plaintiff's housing unit to escort plaintiff to another part of the facility known as the transitional programming unit. Materni recalled that when he arrived at the cell, plaintiff was yelling in an aggravated tone. Once plaintiff exited the cell and was handcuffed, Materni stated, he and Hairabedian started escorting plaintiff away. According to Materni, plaintiff was agitated and tense and made threatening statements, including saying "you think I'm afraid to get busy in handcuffs?" Materni testified that plaintiff also made aggressive jerking movements, and Materni sensed that plaintiff might attempt to cause harm to him or others. Even in handcuffs, Materni explained, plaintiff could have kicked or headbutted someone or thrown his shoulder into them.

{¶11} Materni recounted that he and Hairabedian tried to deescalate the situation but plaintiff persisted, and then the two of them directed plaintiff to the wall where they gave him verbal directives to cease his behavior. Plaintiff tried to turn toward them, Materni stated, and he then began to place plaintiff in a PR-24 escort position, which involves inserting a PR-24 baton in an inmate's handcuffed arms behind the back in a particular way that allows the officer to gain more control over the inmate. Materni explained that he receives regular training on the use of force and that his training has been that when an inmate being escorted is directed to a wall due to their behavior and still will not comply with orders, the officer is to escalate to the next tactic to gain compliance, which in this case was the PR-24 escort or hold. Materni felt the force that he used was necessary because plaintiff was still acting aggressively and trying to break away even after he was placed on the wall.

{¶12} Materni testified that Corrections Officer Butts tried to use his rapport with plaintiff and was able to get plaintiff to comply with officers' directives, and when plaintiff stopped resisting, he and Hairabedian deescalated. At that point, Materni stated, he and Hairabedian turned the escort over to Corrections Officer Butts. Materni did not recall plaintiff complaining about any injury.

{¶13} Materni described how officers are trained that they may use force in certain circumstances, which he identified, and how he has been trained to use the least amount of force needed in a given situation. Materni authenticated a copy of the Use of Force Report that he prepared after the incident. (Defendant's Exhibit A, pp. 6-7.)

{¶14} Corrections Officer O'Jay Butts testified that he has worked at Toledo Correctional Institution for more than twelve years. As Butts recalled, he and other officers were called to plaintiff's housing block, and once he got there he heard plaintiff banging on the door and making statements to the effect that he needed to be removed from the unit. Butts testified that after some time plaintiff agreed to leave the cell, and then officers began escorting plaintiff away, but he became combative and the officers performing the escort had to regain control over him, so they secured him against the wall and then used the PR-24 escort position to gain control. Butts stated that he had been about two or three feet behind the officers during the escort and personally observed plaintiff pulling and trying to break free from those officers. Butts testified that once plaintiff was secured in the PR-24 escort position, the escort resumed and at some point the PR-24 baton was removed.

{¶15} Butts described some of the kinds of training that he regularly receives, including use-of-force training in which officers are instructed that force may be used in several circumstances, including to protect oneself or others or when an inmate does not comply with directives. Officers are taught that when force is permitted, they are to use the least amount of force necessary to control the situation, Butts explained.

{¶16} Butts authenticated a copy of the Use of Force Report that he prepared as a result of this incident. (Defendant's Exhibit A, p. 13.)

Law and Analysis

{¶17} “Allegations of use of unnecessary or excessive force against an inmate may state claims for battery and/or negligence.” *Brown v. Dept. of Rehab. & Corr.*, 2014-Ohio-1810, ¶ 13 (10th Dist.).

{¶18} “To prove battery, the plaintiff must prove that the intentional contact by the defendant was harmful or offensive.” *Miller v. Ohio Dept. of Rehab. & Corr.*, 2012-Ohio-3382, ¶ 11 (10th Dist.); *see also Ettayem v. Safaryan*, 2014-Ohio-4170, ¶ 40 (10th Dist.) (“In order to prevail on a claim for assault, a plaintiff must prove by a preponderance of the evidence that the defendant willfully threatened or attempted to harm or touch the plaintiff offensively in a manner that reasonably placed the plaintiff in fear of the contact.”). “Ohio courts have held that, in a civil action for assault and battery, the defendant has the burden of proving a defense of justification, such as the exercise of lawful authority.” *Miller* at ¶ 11. “A defendant may defeat a battery claim by establishing a privilege or justification defense.” *Brown* at ¶ 13. “However, ‘the use of excessive force by one privileged to use force on another may constitute battery.’” *Russell v. Ohio Dept. of Rehab. & Corr.*, 2019-Ohio-4695, ¶ 11 (10th Dist.), quoting *Shadler v. Double D. Ventures, Inc.*, 2004-Ohio-4802, ¶ 19 (6th Dist.).

{¶19} “To prevail on a negligence claim, a plaintiff must establish the existence of a duty, a breach of the duty, and an injury resulting proximately therefrom.” *Woodbridge v. Ohio Dept. of Rehab. & Corr.*, 2020-Ohio-891, ¶ 30 (10th Dist.). “Ohio law imposes a duty of reasonable care upon the state to provide for its prisoners’ health, care, and well-being.” *Ensmann v. Ohio Dept. of Rehab. & Corr.*, 2006-Ohio-6788, ¶ 5 (10th Dist.).

{¶20} “The use of force is sometimes necessary to control inmates.” *Jodrey v. Ohio Dept. of Rehab. & Corr.*, 2013-Ohio-289, ¶ 17 (10th Dist.). “Correctional officers considering the use of force must evaluate the need to use force based on the circumstances as known and perceived at the time it is considered.” *Brown* at ¶ 15, citing Ohio Adm.Code 5120-9-01(C). “[T]he precise degree of force required to respond to a given situation requires an exercise of discretion by the corrections officer.” *Ensmann* at ¶ 23. “In Ohio Adm.Code 5120-9-01, the Ohio Administrative Code sets forth the circumstances under which correctional officers are authorized to use force against an inmate.” *Id.* at ¶ 6.

{¶21} Ohio Adm.Code 5120-9-01 provides, in part:

(C) Guidelines regarding the use of force. . . .

. . .

(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:

- (a) Self-defense from physical attack or threat of physical harm.
- (b) Defense of another from physical attack or threat of physical attack.
- (c) When necessary to control or subdue an inmate who refuses to obey prison rules, regulations or orders.
- (d) When necessary to stop an inmate from destroying property or engaging in a riot or other disturbance.
- (e) Prevention of an escape or apprehension of an escapee; or
- (f) Controlling or subduing an inmate in order to stop or prevent self-inflicted harm.

{¶22} “Pursuant to Ohio Adm.Code 5120-9-01(C)(1)(a), correctional officers ‘may use force only to the extent deemed necessary to control the situation.’” *Brown* at ¶ 16. “Additionally, correctional officers ‘should attempt to use only the amount of force reasonably necessary under the circumstances to control the situation and shall attempt to minimize physical injury.’” *Id.*, quoting Ohio Adm.Code 5120-9-01(C)(1)(b). “‘Excessive force’ means ‘an application of force which, either by the type of force employed, or the extent to which such force is employed, exceeds that force which reasonably appears to be necessary under all the circumstances surrounding the incident.’” *Russell*, 2019-Ohio-4695, at ¶ 14, quoting Ohio Adm.Code 5120-9-01(B)(3).

{¶23} Upon review of the evidence presented at trial, the magistrate finds as follows. Because plaintiff wanted prison officials to reassign him to another housing unit at Toledo Correctional Institution, on April 23, 2024, he cut himself, threatened suicide, and barricaded himself inside his cell. As a result, several officers were dispatched to plaintiff’s cell. Plaintiff was in an agitated state and initially refused the officers’ directives to exit the cell. Plaintiff subsequently agreed to exit the cell, at which time he was

handcuffed with his arms behind his back and Corrections Officers Hairabedian and Materni began escorting him to the transitional programming unit. Corrections Officer Butts and other staff followed them.

{¶24} While being escorted, plaintiff remained agitated and shouted threats despite officers ordering him to stop. At one point during the escort, plaintiff thrashed or jerked his upper body in such a manner that it appeared he might try to break free or cause harm to the officers. Hairabedian and Materni then directed plaintiff to a wall a few feet away, where plaintiff continued thrashing around, resisting the officers' efforts to restrain him and failing to comply with their verbal directives. Materni placed plaintiff in a PR-24 escort position while Butts and other staff assisted in gaining control of plaintiff and getting him to stop resisting. Whether or not plaintiff sustained a finger injury when struggling to resist the officers as they tried to restrain him, the force used by the officers did not exceed what was necessary to gain control of plaintiff. The escort then resumed without further incident.

{¶25} The force used by the officers was justified and privileged under the circumstances in that the officers reasonably perceived him to pose a threat of physical harm based upon his aggressive behavior, he refused to comply with their verbal directives, and he resisted their efforts to control or subdue him. The degree of force used by the officers was not excessive and satisfied the duty of reasonable care. The testimony of the officers was substantially corroborated by the video of the incident.

Conclusion

{¶26} Based upon the foregoing, the magistrate finds that plaintiff did not prove his claim by a preponderance of the evidence. Accordingly, judgment is recommended in favor of defendant.

{¶27} 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).

ROBERT VAN SCHOYCK
Magistrate

Filed April 10, 2026
Sent to S.C. Reporter 5/12/26