

[Cite as *Murphy v. Ohio Dept. of Rehab. & Corr.*, 2001-Ohio-3955.]

IN THE COURT OF CLAIMS OF OHIO

JOSEPH D. MURPHY :  
Plaintiff : CASE NO. 99-12073  
v. : DECISION  
DEPARTMENT OF REHABILITATION : Judge Fred J. Shoemaker  
AND CORRECTION :  
Defendant :  
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This matter was tried to the court on the sole issue of liability. The parties filed post-trial briefs.

Plaintiff was a death row inmate at Mansfield Correctional Institution (ManCI). Plaintiff filed his complaint, alleging that defendant Department of Rehabilitation and Correction (DRC) was negligent in allowing the September 5, 1997, riot in death row pod #4 (DR-4) to take place. Of the five death row units, DR-4 housed the most dangerous inmates. The riot began after death row inmate Keith Lamar overpowered and assaulted Corrections Officer (CO) George Hayes and stole Hayes' keys. Lamar and inmate Tony Powell then freed other death row inmates in DR-4. The COs were able to escape. However, after Lamar and Powell used the keys to release other inmates, they and the inmates whom they had released assaulted other inmates including plaintiff. This was a major riot that lasted for several hours, causing injuries to inmates and substantial property damage to

the institution. In addition, there were substantial personnel and other costs.

A major cause of the rioting was the decision by inmate Wilford Berry to volunteer to be executed rather than to appeal his death sentence. Berry had always been locked in his cell for his own protection. He was savagely beaten by the rioting inmates. The rioters also attacked inmates who they believed to be "snitches." (A "snitch" is an inmate who delivers information to the staff regarding activities of other inmates.)

Plaintiff also alleges that he received inadequate medical treatment from the staff at ManCI after the riot.

The court, after evaluating the credibility of all the witnesses and reviewing all of the admitted exhibits, makes the following judgment based upon the preponderance of the evidence and the law.

#### FINDINGS OF FACT

1) On June 25, 1997, plaintiff was a convicted killer housed on death row at the ManCI. On that date, he received two conduct reports. One report was for refusing to "lock up," the other was for assaulting an officer with handcuffs. (Defendant's Exhibit K.);

2) At that time, the death row unit at ManCI consisted of five death row general population pods, *i.e.*, DR-1 through DR-5. DR-4 consisted of an A-side, which housed general population death row inmates, and a B-side, which was the disciplinary segregation unit for death row. The B-side of DR-4 housed inmates who were on security control, local control, and administrative control status. The B-side inmates received fewer privileges than inmates on the A-side;

3) Murphy was assigned to the B-side of DR-4 pending a hearing before the Rules Infraction Board (RIB) for the two conduct reports. He was subsequently found guilty on both reports and was sentenced to local control on the B-side in DR-4;

4) Murphy, orally and in writing, stated his displeasure with the RIB convictions because he believed that the officer had assaulted *him*. (Defendant's Exhibits F, G and K.);

5) In the summer of 1997, the entire death row unit was single-celled. Tension in DR-4 was high due to hunger strikes, lack of privileges, TB health tests, and the fact that death row inmate Wilford Berry had attempted to waive his right to pursue his death penalty appeal. Therefore, deputy wardens and other high-ranking institutional officials were in DR-4 on a daily basis;

6) On July 11, 1997, Murphy overheard certain death row inmates discussing a takeover of DR-4;

7) Rumors of a possible takeover or riot often surfaced at ManCI. For example, Officer Betty Traxler had heard grumblings of a possible takeover for three to four months prior to the summer of 1997;

8) On July 14, 1997, Murphy informed Officer Traxler that he had overheard inmates discussing a takeover. During the conversation he never asked that he be moved from the B-side of DR-4 nor did he indicate that he feared for his life;

9) Officer Traxler conveyed the information to the appropriate parties and security was increased in DR-4. Two lieutenants were assigned to DR-4 during the first and second shifts, when inmates would have reason to be out of their cells;

10) The lieutenants reviewed security procedures and observed the inmate environment in DR-4 for approximately two weeks. During that time, Murphy was not interviewed because he would have been in substantial danger if other inmates observed him talking with investigators and he would be considered a "snitch";

11) While the lieutenants were in DR-4, the institution did not receive any additional or new information that a takeover was still being planned. Therefore, the lieutenants were pulled out of DR-4 at the end of July 1997 and staffing levels were returned to normal. That action would not have been taken if there was reason to believe there was going to be a takeover;

12) Between the end of July 1997, up to September 5, 1997, the institution did not receive any additional or new information from Murphy or any other inmate that a riot was being planned;

13) Although there were written communications from Murphy in August of 1997, allegedly warning of the riot, the evidence shows they were forged and/or altered by Murphy. The true purpose of those communications was Murphy's allegation that he did not deserve the two conduct reports he received in June of 1997. (Defendant's Exhibits F, G, K; Plaintiff's Exhibits 9, 22, 23, 31.) The evidence was absolutely clear that plaintiff gave perjured testimony regarding these exhibits;

14) Investigator Joseph Masi did not receive any information via letter or telephone from Shirley Pope, Principal Research Assistant for the Correctional Institution Inspection Committee, prior to the riot;

15) Prior to the riot, the institution was not aware that inmates Keith Lamar and Tony Powell planned to take over DR-4 or that Murphy was in any personal danger;

16) On September 3, 1997, Institutional Inspector Priscilla Rowe spoke with Murphy in a private RIB room within DR-4. They discussed his recent written communication to her regarding the conduct reports he received for assaulting an officer on June 25, 1997. Murphy appeared relaxed, pleasant, calm, and not in fear for his life. He did not say anything to her about a takeover. (Defendant's Exhibit K.);

17) On September 5, 1997, Murphy was still in local control on B-side in DR-4;

18) On September 5, 1997, the riot occurred in DR-4 after inmate Keith Lamar overpowered a CO in a recreation area and used the officer's keys to release inmate Tony Powell from another recreational cage. Together, inmates Lamar and Powell assaulted the officers on duty and obtained the officers' keys before the officers were able to escape DR-4;

19) Inmates Lamar and Powell used the officers' keys to release other inmates in DR-4 from their cells. Lamar, Powell and other inmates then assaulted several others, including Murphy. Their prime target was inmate Wilford Berry ("the volunteer"); however, any inmate suspected of being a "snitch" was also assaulted;

20) On September 5, 1997, no separation orders existed between Murphy and inmates Lamar or Powell;

21) Although the riot was confined within DR-4, the interior of DR-4 could not be seen. The DR-4 inmates had painted the

windows with primer and placed sheets over shattered glass to obstruct any view;

22) In accordance with critical incident protocol, the institution developed a tactical plan to retake DR-4. Given the thirty-seven unsecured death row inmates in DR-4, at least thirty members of the Special Response Team (SRT), trained to respond to prison disturbances, were needed to enter DR-4. The plan also called for distraction devices, such as "flash bangs," to be fired into DR-4 as well as disbursement of tear gas through the ventilation system;

23) Prior to the SRT entering DR-4, the lights were shut off. The plan called for the SRT to physically enter DR-4 with appropriate weapons and to use necessary force, including deadly force, to restore order and gain control;

24) Tear gas was dispensed into DR-4 at approximately 10:00 p.m. The SRT entered the outer door to DR-4, not knowing what awaited them. (Defendant's Exhibits M, N, O, P, and Q.) However, the inner door to DR-4 had been secured by the inmates with chains, handcuffs, and leg irons;

25) Bolt cutters were used to open the inner door to DR-4. (Defendant's Exhibits M, N, O, P, and Q.) The SRT extracted every DR-4 inmate. All areas were covered, including cells, fire escapes, recreation cages, and the RIB room. Each inmate was handcuffed per security policies and escorted to a nearby triage area for medical assessment. No excessive force was used on any inmate;

26) After the riot, the DR-4 inmates that had previously been housed on the B-side remained housed together in a different

unit. All of these inmates were still under security, local, and administrative control status. Murphy remained under local control status until several months after the riot due to his being found guilty of the conduct reports he received on June 25, 1997. Later, the guilty findings were reversed by the warden on procedural grounds. (Plaintiff's Exhibit 11.);

27) Defendant acted reasonably after plaintiff told them that certain inmates would attempt to take control of DR-4. Defendant should not be required to maintain extra security on DR-4 indefinitely;

28) Plaintiff did not prove that defendant had actual or constructive notice of an impending assault upon him.

#### CONCLUSIONS OF LAW

1) 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;

2) The court has the responsibility to judge the credibility of every witness;

3) Prisons are inherently dangerous and prison officials owe a duty of reasonable care to inmates but are not insurers of their safety. *Clemets v. Heston* (1985), 20 Ohio App.3d 231; *Williams v. Southern Ohio Correctional Facility* (1990), 67 Ohio App.3d 517;

4) Defendant's withdrawal of extra lieutenants in DR-4 was a decision involving a high degree of official judgment and

discretion and the state is not liable for such a decision.  
*Reynolds v. State* (1984), 14 Ohio St.3d 68 at 70;

5) An assault upon plaintiff by Lamar and Powell was not a reasonably foreseeable result of CO Hayes' negligence under the circumstances of this case. *Evans v. Mansfield Corr. Inst.* (Jan. 19, 2001), Court of Claims No. 98-06801, unreported;

6) Defendant had insufficient notice of an impending attack upon plaintiff and is not liable for the injuries sustained by plaintiff as a result of the attack. *Millette v. Ohio Dept. of Rehab. & Corr.* (1996), 83 Ohio Misc.2d 44;

7) Defendant's actions in quelling the riot were reasonable under all the circumstances;

8) Defendant is also entitled to discretionary immunity regarding the housing of inmates;

9) Plaintiff failed to prove by a preponderance of the evidence that he received inadequate medical treatment after the riot.

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Judgment shall be rendered in favor of defendant.

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FRED J. SHOEMAKER

Judge



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