

[Cite as *Booth v. Ohio Dept. of Rehab. & Corr.*, 2006-Ohio-2540.]

IN THE COURT OF CLAIMS OF OHIO
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DANIEL BOOTH :

Plaintiff : CASE NO. 2004-01419
Judge Joseph T. Clark
v. : Magistrate Steven A. Larson

OHIO DEPARTMENT OF : JUDGMENT ENTRY
REHABILITATION AND CORRECTION :
Defendant :

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{¶ 1} This case was tried to a magistrate of the court. On December 12, 2005, the magistrate issued a decision recommending judgment for plaintiff. The magistrate also recommended that the court issue a determination that defendant's employee, Guy Adams, is entitled to civil immunity.

{¶ 2} Civ.R. 53(E)(3)(a) states: "A party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, regardless of whether the court has adopted the decision pursuant to Civ.R. 53(E)(4)(c). ***" Defendant filed objections on December 22, 2005. Plaintiff replied on January 19, 2006.

{¶ 3} 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 was assigned to kitchen duty at Southeastern Correctional Institution. Plaintiff brought suit after he was injured in an altercation with Guy Adams, defendant's employee. Plaintiff alleged Adams used excessive force during the altercation.

{¶ 4} On January 28, 2003, plaintiff had just finished serving breakfast to the general inmate population and when he attempted to

get his own breakfast, Adams refused to serve him because he thought that plaintiff had already eaten. Eventually, plaintiff was allowed to take a tray of food, however when he reached into a cooler for juice, Adams shut the door on his hand.

{¶ 5} After complaining of Adams' actions to nearby corrections officers, plaintiff was walking with his tray when he intentionally collided with Adams and spilled food on him. As plaintiff then began to back away from Adams, Adams struck him in the face with two large metal ladles he was carrying.

{¶ 6} The magistrate found that Adams used excessive force against plaintiff and that defendant was liable to plaintiff for Adams' actions.

{¶ 7} In his second objection, defendant objects to the magistrate's conclusion that the video of the incident clearly shows excessive use of force by Adams.

{¶ 8} The magistrate stated that "the videotape of the incident shows that plaintiff was backing away from Adams after the two collided and was attempting to avoid further contact. It is also clear from the tape that Adams continued advancing toward plaintiff ***. The act of pursuing and striking plaintiff exceeded the amount of force that was reasonably necessary under the circumstances, or that was necessary in order to enforce the institution's rules and regulations."

{¶ 9} After an independent review of the evidence, the court finds that the video clearly shows Adams advancing toward plaintiff and plaintiff backing away. Although the videotape does not show the moment of impact, the sudden upward movement of Adams' arm shown in the videotape combined with the physical injuries suffered by plaintiff support the conclusion that Adams struck

plaintiff in the face with the ladles. Thus, the court agrees with the magistrate's conclusion.

{¶ 10} Defendant's first objection is that the magistrate's decision is based upon the inadmissible hearsay statements of a Department of Rehabilitation and Corrections internal investigator, David French. However, the court's review of the videotape and the testimony of plaintiff convinces the court that the magistrate's ultimate conclusions were correct. Thus, any reliance upon hearsay testimony was not prejudicial to defendant.

{¶ 11} Upon review of the record and the magistrate's decision, defendant's objections are OVERRULED and the court adopts the magistrate's decision and recommendation as its own, including the findings of fact and conclusions of law contained therein. Judgment is rendered in favor of plaintiff in an amount to be determined after the damages phase of the trial. The court shall issue an entry in the near future scheduling a trial on the issue of damages.

{¶ 12} Additionally, the court determines that Guy Adams is entitled to civil immunity pursuant to R.C. 2743.02(F) and 9.86 and that the courts of common pleas do not have jurisdiction over any civil action against Adams arising from the allegations of plaintiff's complaint.

JOSEPH T. CLARK
Judge

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