

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT W. KORTMAN : CIVIL ACTION  
: :  
v. : :  
: :  
WARDEN GUARINI, MAJOR EDWARD : :  
KLINOVSKI, SARGEANT RAYMOND : :  
HENHLEY, CORRECTION OFFICER : :  
STEVEN NAPOLITAN, CORRECTION : :  
OFFICER DALE BYRD, CORRECTION : :  
OFFICER JOSHUA LIPMAN and : :  
CONSTABLE ANDREW MEASE : NO. 04-04132-JF

ADJUDICATION

Fullam, Sr. J.

August 2, 2006

*Pro se* plaintiff seeks damages from the defendants because of alleged mistreatment which occurred in early August, 2002. The case has been tried non-jury. My findings and conclusions are summarized below.

*Pro se* plaintiff had earlier been convicted and sentenced for drunken driving, and was on probation. He allegedly violated a reporting condition of his probation on or about August 11, 2002. On August 13, 2002, a warrant was issued for his arrest.

Plaintiff spent part of the evening of August 30, 2002 in a local tavern and had consumed a few beers when he received a message from a female acquaintance, to the effect that she had attended a party and had had too much to drink, was unable to drive herself home, and needed plaintiff's assistance. Plaintiff

then left the bar and returned to his home, so as to provide the female acquaintance a place to stay the night. Apparently, the local police had observed the lady's arrival at plaintiff's house, where she was awaiting plaintiff's return.

In the early morning hours of August 31, 2002, the local police returned to plaintiff's house with the arrest warrant, and took plaintiff into custody. They pulled him from the bed where he was sleeping, and he was clad only in a pair of shorts. In that condition, the police transported plaintiff to the Lancaster County Prison, arriving at about 4:00 a.m. The events of particular significance to this case then occurred.

Upon arrival at the Lancaster County Prison, plaintiff was delivered to the room where intake processing was to occur. The defendant correction officers Dale Byrd and Steven Napolitan were on duty. The defendant Byrd immediately said to defendant Napolitan, "Look at this pile of shit." (referring to plaintiff), whereupon plaintiff said, "Look at yourself." The defendant Byrd then assaulted plaintiff, striking him in the back of the head and pushing him violently up against the counter for intake processing.

Plaintiff had been brought to the prison in handcuffs and leg shackles. At some point during the intake questioning, the defendant Byrd stepped on the leg shackles, pressing them into plaintiff's ankles and causing abrasions. Byrd also

propelled plaintiff to a nearby bench by reaching inside plaintiff's shorts from the rear and grasping plaintiff's testicles.

After the handcuffs and shackles were removed, plaintiff was taken to another room, in part by pulling his (long) hair in order to expedite the journey. Plaintiff's clothing was then forcibly removed, and he was subjected to routine strip-search. Three of the guards then present (the defendants Byrd, Napolitan and Lipman) made scornful remarks about plaintiff during the search, and subjected plaintiff to ridicule.

Plaintiff sought to complain about his treatment, but the officer in charge refused to pay attention to his complaints, stating that it was his policy to back up his men in the performance of their duties. Later complaints to the Warden were equally unproductive.

Plaintiff was in custody for the probation violation when, on September 10, 2002, he was charged with assault and battery upon the prison guards, based upon an allegation that, in the course of their confrontation, plaintiff had spit upon the defendant Napolitan. Plaintiff pleaded not guilty, but was convicted at a jury trial, and served some additional time in prison based upon that conviction.

It was plaintiff's contention that the charge of spitting was completely baseless, and that the assault and battery complaint was lodged in an attempt to de-fuse plaintiff's complaints about mistreatment. I express no view on that subject, because plaintiff was in fact convicted, and his conviction was upheld on appeal. I therefore have no authority to disregard the criminal judgment. To the extent that plaintiff seeks damages for imprisonment, his claims must be rejected.

The criminal conviction does not, however, preclude an award for the damages sustained as a result of the violations of his rights which occurred at intake. The evidence makes clear that officer Byrd used unreasonably excessive force, and that he was motivated by a desire to punish, rather than simply achieve compliance with the intake procedures. There is simply no evidence that plaintiff was physically resisting the officers, or that plaintiff had done anything which would justify the actions complained of.

I found plaintiff to be a credible witness in all respects. Much of the testimony of the defendant officers was remarkably vague (professions not to remember), or entirely consistent with plaintiff's version of events. For example, there is no dispute about the fact that the officer inserted his hand between plaintiff's legs, from the rear, in propelling plaintiff toward the bench. The testimony that this was done in

order to grasp the leg irons from the rear does not make much sense, and would seemingly have constituted excessive use of force in any event. Thus, whether the officer intentionally grasped plaintiff's testicles or not, it is clear that unreasonable force was used.

As noted above, most of plaintiff's damages relate to his imprisonment. Damages can be awarded only for the mistreatment which occurred at intake. I conclude that a reasonable sum to compensate plaintiff for the violations which are actionable would be \$750.00.

The evidence makes clear that the defendant Dale Byrd is liable to plaintiff. There is, however, no evidence sufficient to impose liability upon Warden Guarini, Major Klinovski, Sargeant Raymond Henhley or Constable Andrew Mease. I likewise conclude that plaintiff has not adequately supported his claims against the defendants Steven Napolitan and Joshua Lipman. Accordingly, the judgment will be entered against the defendant Byrd only.

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ORDER

AND NOW, this 2<sup>nd</sup> day of August 2006, IT IS ORDERED:

1. JUDGMENT is ENTERED in favor of the plaintiff, Robert W. Kortman, and against the defendant Dale Byrd in the sum of \$750.00.
2. Plaintiff's claims against all of the other defendants are DISMISSED with prejudice.
3. The Clerk is directed to close the file.

BY THE COURT:

/s/ John P. Fullam  
John P. Fullam, Sr. J.