

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

UNITED STATES OF AMERICA :  
 :  
 V. : 97-CR-14  
 :  
 ALVA KULP, :  
 CHARLES CARTWRIGHT, and :  
 MICHAEL REGAN :

MEMORANDUM

Broderick, J.

July 30, 1997

Presently before the court are the post-trial motions of defendants Alva Kulp, Charles Cartwright, and Michael Regan for judgment of acquittal pursuant to Rule 29(c) of the Federal Rules of Criminal Procedure. Defendant Regan also moves in the alternative for a new trial pursuant to Federal Rule of Criminal Procedure 33. For the reasons stated hereinafter, the court will deny the post-trial motions of each defendant.

The indictment in this case was filed on January 9, 1997 against nine prison guards from the Delaware County Prison, located in Thorton, Pennsylvania -- Alva Kulp, Jamie Campbell, Charles Cartwright, Anthony Mettimano, Joseph Ianncelli, Michael Regan, Patrick Quigley, Joseph Grawl, and Eric Rich.

Count one charges Anthony Mettimano and Charles Cartwright with the deprivation of inmate Robert Taylor's Eighth Amendment rights under color of law, 18 U.S.C. § 242, and aiding and abetting, 18 U.S.C. § 2, in connection with the alleged beating by the defendants of Taylor on March 16, 1994.

Count two charges Alva Kulp, Charles Cartwright, Jamie

Campbell, Joseph Ianncelli, Anthony Mettimano, and Michael Regan with the deprivation of prison inmate Ronald Seaton's Eighth Amendment rights under color of law, 18 U.S.C. § 242, and aiding and abetting, 18 U.S.C. § 2, in connection with the alleged beating by the defendants of Seaton on April 16, 1994.

Count three charges Joseph Ianncelli, Anthony Mettimano, and Patrick Quigley with the deprivation of prison inmate Winfield Jones' Eighth Amendment rights under color of law, 18 U.S.C. § 242, and with aiding and abetting, 18 U.S.C. § 2, in connection with the alleged beating by the defendants of Jones on May 28, 1994.

Count four charges Alva Kulp, Charles Cartwright, Jamie Campbell, Joseph Grawl, and Eric Rich with the deprivation of inmate Kenneth Hawkins' (a/k/a "Kenny Powell") Eighth Amendment rights under color of law, 18 U.S.C. § 242, and aiding and abetting, 18 U.S.C. § 2, in connection with the alleged beating by the defendants of Hawkins on July 20, 1994.

Count five charges Michael Regan with making a false declaration before the grand jury on February 1, 1996, in violation of 18 U.S.C. § 1623.

Count six charges Michael Regan with making a false declaration before the grand jury on February 8, 1996, in violation of 18 U.S.C. § 1623.

Soon after the January 9, 1997 filing of the indictment in this case, defendants Anthony Mettimano, Joseph Ianncelli, Patrick Quigley, Joseph Grawl, and Eric Rich pled guilty before

this court to each count of the indictment with which they were charged.

The remaining defendants -- Alva Kulp, Jamie Campbell, Charles Cartwright, and Michael Regan -- went to trial commencing on April 4, 1997. Each of the five prison guards who pled guilty testified as government witnesses at trial.

The jury returned with its verdict on April 17, 1997 finding as follows: As to defendant Kulp, the jury found him guilty on count two and not guilty on count four. As to defendant Charles Cartwright, the jury found him guilty on count one, guilty on count two, and not guilty on count four. As to defendant Jamie Campbell, the jury found him not guilty on count two and not guilty on count four. As to defendant Michael Regan, the jury found him not guilty on count two, guilty on count five, and not guilty on count six.

#### Summary of the evidence presented at trial

As to count one of the indictment, the evidence presented at trial may be summarized as follows: In the evening of March 16, 1994, defendant Cartwright, a corporal by rank, along with fellow prison guards John Glick and Anthony Mettimano went to the prison's "A-block" to locate inmate Robert Taylor. The guards had received information that Taylor, who was an inmate suffering psychiatric problems, had not taken his prescribed medication. It was the guard's intention to escort Taylor to the prison's infirmary so that his medication could be administered. As the

three guards approached inmate Taylor, defendant Cartwright informed him that they intended to escort him to the infirmary for his medication. Taylor then punched defendant Cartwright in the face. Immediately, the guards wrestled inmate Taylor to the ground and handcuffed him.

The guards escorted inmate Taylor out of the A-block into the "center-control" area of the prison. Testimony was presented by prison guard Glick that inmate Taylor was under control and was not acting in a threatening manner while he was being escorted into the center-control area. Glick further testified that upon entering the center-control area, "Corporal Cartwright punched Mr. Taylor through the door onto the ground, on the center floor," and that while Taylor was lying on the floor handcuffed, "Corporal Cartwright began to kick Mr. Taylor on the ground." Glick testified that the kicks to inmate Taylor were not necessary to restrain Taylor or to protect other prison guards.

Soon after defendant Cartwright ceased kicking him, Taylor was escorted out of the center-control area to the prison's infirmary. Once in the infirmary, inmate Taylor was dragged along the floor to an isolation cell. Guard Mettimano testified at trial that both he and defendant Cartwright repeatedly kicked inmate Taylor as they were dragging him to the isolation cell. Mettimano testified that the kicks to Taylor were not necessary to restrain Taylor or to protect other guards.

Moreover, prison guard Patrick Quigley testified that once

the guards placed inmate Taylor face down in the isolation cell, he saw defendant Cartwright standing over Taylor "hitting him with a short portion of the PR-24 [baton] in his back" and yelling, "you want to hit me now?" Guard Quigley testified that the blows administered by defendant Cartwright were not necessary to restrain Taylor or to protect the other prison guards.

As to count two of the indictment, the evidence presented at trial may be summarized as follows: In the evening of April 16, 1994, defendant Cartwright ordered defendant Campbell to tell the inmates in the prison's "C-dayroom" to turn down the volume of the television set. Defendant Campbell then yelled to the inmates that they must turn down the volume of the television set. The inmates, however, ignored Campbell's orders. Defendant Cartwright then walked into the C-dayroom and ordered the dayroom closed. He then ordered defendant Campbell to turn off the television set, which Campbell did.

Soon thereafter, inmate Ronald Seaton began arguing with defendant Campbell and struck Campbell in the face. Several guards, including guards Iannelli and Regan, wrestled inmate Seaton to the ground and handcuffed him. They escorted Seaton out of the C-dayroom. Iannelli testified that while escorting Seaton out of the dayroom and into the center-control area, Seaton was handcuffed and under control. However, Iannelli noted that Seaton did appear to be resisting the efforts to control him.

Once inmate Seaton was escorted into the center-control

area, the guards forced him to the ground. While on the ground, Seaton began kicking at the guards. Guard Ianncelli then rolled Seaton onto his stomach and knelt on his back. Despite Seaton's attempts to resist, Ianncelli testified that he had complete control over the inmate.

Defendants Kulp, Cartwright, Campbell, Regan, and Mettimano were all present in the center-control room. Defendant Kulp, a lieutenant by rank, ordered another guard to retrieve leg-shackles to be placed on Seaton. Defendant Kulp then passed out PR-24 batons and ordered the guards to strike inmate Seaton on the back of his legs. Ianncelli testified that he saw defendant Kulp, as well as several other guards, swinging their PR-24 batons at Seaton. Ianncelli specifically testified that he saw defendant Regan swing his PR-24 and make contact with Seaton.

Guard Mettimano testified that defendant Kulp walked up to him and said, "that's not how you hit an inmate. This is how you hit an inmate," and that defendant Kulp took a two-handed swing striking Seaton several times. Guard Mettimano testified that defendant Kulp's blows to inmate Seaton were not necessary to restrain him or to protect the other guards.

Prison guard Al Pleasant testified that he heard defendant Cartwright yell, "you don't hit any of my fucking officers." Pleasant testified that he then saw defendant Cartwright kick inmate Seaton on the right side of his body, while Seaton was pinned on the ground by Ianncelli. Guard Pleasant testified that defendant Cartwright's kick to Seaton did not appear necessary to

restrain Seaton or to protect the other guards.

Guard Pleasant testified that defendant Regan was standing next to him when defendant Cartwright kicked Seaton. Soon thereafter, inmate Seaton was shackled and taken up to the prison infirmary. After receiving treatment at the infirmary, Seaton was escorted back downstairs to the Behavior Modification Unit ("BMU"). Seaton was still handcuffed and shackled and, according to Ianncelli's testimony, he was calm and was not posing a threat to the other guards. Ianncelli testified that while Seaton was being escorted from the infirmary, defendant Kulp approached Seaton and struck him from behind with his PR-24 baton. Ianncelli testified that defendant Kulp's blow to Seaton was not necessary to restrain Seaton or to protect the other guards.

The defendants' motions for judgment of acquittal pursuant to Rule 29(c)

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Each defendant -- Alva Kulp, Charles Cartwright, and Michael Regan -- moves the court for judgment of acquittal pursuant to Federal Rule of Criminal Procedure 29. In determining a motion for judgment of acquittal on the grounds of insufficient evidence, the court must uphold a verdict of guilty if, viewing the evidence introduced at trial in the light most favorable to the government, a reasonable jury could find the defendant guilty beyond a reasonable doubt of every element of the offense. United States v. Terselich, 885 F.2d 1094, 1097 (3d Cir. 1989).

Count one: the beating of inmate Taylor

The jury found defendant Cartwright guilty on count one, which charged the deprivation of inmate Robert Taylor's Eighth Amendment rights under color of law in violation of 18 U.S.C. § 242, and with aiding and abetting the deprivation of inmate Robert Taylor's Eighth Amendment rights, in violation of 18 U.S.C. § 2.

As to count one, the court charged the jury as follows:

The essential elements of the crime of § 242 which the Government must prove beyond a reasonable doubt before you may find Defendant Cartwright guilty of violating § 242 are:

1. that Defendant Cartwright deprived inmate Robert Taylor of his Eighth Amendment right to be free from cruel and unusual punishment; and
2. that Defendant Cartwright acted willfully; and
3. that Defendant Cartwright acted under color of law.

With regard to the first element of a § 242 violation, the court charged the jury as follows:

The first element the Government must prove beyond a reasonable doubt is that Defendant Cartwright deprived inmate Robert Taylor of his Eighth Amendment rights to be free from cruel and unusual punishment; that is, the right to be free from the unnecessary and wanton infliction of pain. . . . Where a prison guard undertakes the use of force to resolve a disturbance, it is the Jury's duty to determine whether the force used by the prison guard was applied by him in a good faith effort to maintain or restore discipline or was applied by him maliciously and sadistically for the purpose of causing harm to the inmate. Force that is applied upon an inmate by a prison guard in a good faith effort to maintain or restore discipline does not violate the inmate's Eighth Amendment rights. However, force that is applied by the prison guard maliciously and sadistically for the purpose of causing harm to the inmate, violates the

inmate's Eighth Amendment rights.

See Hudson v. McMillian, 503 U.S. 1, 7, 112 S.Ct. 995, 999 (1992);  
Whitley v. Albers, 475 U.S. 312, 320-21, 106 S.Ct. 1078, 1085  
(1986).

Moreover, with regard to the second element of a § 242 violation, the court instructed the jury as follows:

To act willfully means to act voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires. . . . To establish specific intent, the Government must prove beyond a reasonable doubt that Defendant Cartwright harbored the specific intent to deprive inmate Robert Taylor of his Eighth Amendment right to be free from the unnecessary and wanton infliction of pain. Specific intent is established if the Government has proved that Defendant Cartwright acted in open defiance or reckless disregard of inmate Robert Taylor's Eighth Amendment right to be free from the unnecessary and wanton infliction of pain.

See United States v. Johnstone, 107 F.3d 200 (3d Cir. 1997).

The court further charged the jury with respect to the § 2 aiding and abetting charge in count one as follows:

As I previously stated, the second law with which Defendant Cartwright is charged in count one is aiding and abetting in violation of § 2 of Title 18 U.S.C. . . . However, you need not consider the crime of aiding and abetting as to Defendant Cartwright if you determine that the Government has proved beyond a reasonable doubt that Defendant Cartwright violated § 242, as to inmate Robert Taylor.

In order to find Defendant Cartwright guilty of aiding and abetting under § 2, the Government must prove beyond a reasonable doubt that Defendant Cartwright aided and abetted some other prison guard in depriving inmate Robert Taylor of his Eighth Amendment rights and that Defendant Taylor did so knowingly and intentionally with the intent to deprive the inmate of his Eighth Amendment rights.

As the court's summary of the evidence relating to count one

shows, the government produced more than sufficient evidence from which a reasonable jury could find beyond a reasonable doubt that defendant Cartwright deprived inmate Robert Taylor of his Eighth Amendment rights, in violation of § 242, or that defendant Cartwright aided and abetted the deprivation of inmate Robert Taylor's Eighth Amendment rights, in violation of § 2. Evidence was presented through the testimony of prison guard Glick that upon entering the center-control area, "Corporal Cartwright punched Mr. Taylor through the door onto the ground, on the center floor," and that while Taylor was on the floor handcuffed "Corporal Cartwright began to kick Mr. Taylor on the ground." Glick testified that defendant Cartwright's punch and kicks were not necessary to restrain Taylor or to protect the other prison guards.

Moreover, evidence was presented that defendant Cartwright repeatedly kicked inmate Taylor as he was being dragged to an isolation cell in the prison infirmary, and that these kicks were not necessary to restrain inmate Taylor or to protect other guards. Evidence was presented that once the guards placed inmate Taylor face down in the isolation cell in the prison infirmary, defendant Cartwright stood over inmate Taylor "hitting him with a short portion of the PR-24 [baton] in his back" and yelling, "you want to hit me now?" Guard Quigley testified that the blows administered by defendant Cartwright were not necessary to restrain inmate Taylor or to protect other prison guards.

Accordingly, the court finds that the government produced

more than sufficient evidence from which a reasonable jury could find, beyond a reasonable doubt, defendant Cartwright guilty on count one.

Count two: the beating of inmate Ronald Seaton

The jury found defendants Cartwright and Kulp guilty on count two, which charged defendants Kulp, Campbell, Cartwright, and Regan with the deprivation of inmate Ronald Seaton's Eighth Amendment rights under color of law, in violation of 18 U.S.C. § 242, and with aiding and abetting the deprivation of inmate Ronald Seaton's Eighth Amendment rights, in violation of 18 U.S.C. § 2. As heretofore pointed out, the jury found defendants Campbell and Regan not guilty on count two.

As the court's summary of the evidence relating to count two shows, the government produced more than sufficient evidence from which a reasonable jury could find beyond a reasonable doubt that defendants Cartwright and Kulp deprived inmate Ronald Seaton of his Eighth Amendment rights, in violation of § 242, or that defendants Cartwright and Kulp aided and abetted the deprivation of inmate Ronald Seaton's Eighth Amendment rights, in violation of § 2.

As to defendant Cartwright, evidence was presented that defendant Cartwright kicked inmate Seaton on the right side of his body, while Seaton was handcuffed on the ground, and that Cartwright yelled, "you don't hit any of my fucking officers." Guard Pleasant testified that defendant Cartwright's kick to

Seaton did not appear necessary to restrain Seaton or to protect other guards. Moreover, there was testimony that Cartwright was present in the center-room while the beating of inmate Seaton by several guards with PR-24s was taking place.

As to defendant Alva Kulp, evidence was presented that defendant Kulp joined the other guards in the control-center room in swinging their PR-24 batons at inmate Seaton, while Seaton was handcuffed and lying on the ground. Guard Mettimano testified that defendant Kulp walked up to him and said "that's not how you hit an inmate, this is how you hit an inmate," and that defendant Kulp then took a two-handed swing striking Seaton several times with his PR-24 baton. Guard Mettimano testified that defendant Kulp's blows to Seaton were not necessary to restrain him or to protect other guards.

Moreover, guard Ianncelli testified that later in the evening, while inmate Seaton was being escorted across the floor of the center-control area to the BMU, defendant Kulp approached Seaton and struck him from behind with his PR-24 baton. Ianncelli testified that defendant Kulp's blow to Seaton was not necessary to restrain Seaton or to protect the other guards.

Accordingly, the court finds that the government presented more than sufficient evidence from which a reasonable jury could find, beyond a reasonable doubt, defendants Cartwright and Kulp guilty on count two.

Count five: defendant Regan's false declaration to the grand jury

As heretofore pointed out, the jury found defendant Reagan guilty on count five, which charged him with making a false declaration before the grand jury on February 1, 1996. Specifically, the jury found beyond a reasonable doubt that defendant Reagan violated 18 U.S.C. § 1623 by responding "No" to the following question presented to him before that grand jury: "Did you ever see any physical abuse of that prisoner [Ronald Seaton] while you were in center."

In charging the jury in connection with count five, the court stated:

In order to prove that Defendant Reagan violated § 1623, the Government must prove beyond a reasonable doubt each of the following essential elements of § 1623:

1. that Defendant Reagan testified under oath before a federal grand jury on February 1, 1996; and
2. that Defendant Reagan made a false material declaration, as set forth in count five, during that grand jury testimony; and
3. that Defendant Reagan knew that the declaration, as set forth in count five, was false when he gave the testimony before the grand jury.

See United States v. Reilly, 33 F.3d 1396 (3d Cir. 1994); United States v. Slawik, 548 F.2d 75 (3d Cir. 1977).

As the court's summary of the evidence shows, the government presented more than sufficient evidence from which a reasonable jury could find beyond a reasonable doubt that defendant Reagan knowingly made a false material declaration before the grand jury on February 1, 1996. The evidence shows that defendant Reagan was present in the center-control area when inmate Ronald Seaton,

lying on the floor handcuffed, was being struck with PR-24 batons by the guards. Furthermore, the evidence shows that defendant Regan himself struck inmate Seaton with a PR-24 baton. Regan was also standing in the room when Cartwright kicked Seaton on the right side of his body, while Seaton was lying handcuffed on the ground and under the control of guard Ianncelli.

Accordingly, the court finds that the government presented more than sufficient evidence from which a reasonable jury could find, beyond a reasonable doubt, defendant Regan guilty on count five.

In the alternative, defendant Regan contends that he is entitled to a new trial on the ground that the court erred in refusing to instruct the jury as follows:

Defendant Regan's Request No. 1.

Michael Regan is charged in Count Five of the indictment with knowingly making a false material declaration under oath, by testifying before the grand jury that he did not see any prison correctional officers inflict physical abuse on inmate Ronald Seaton while Seaton was in Center. "Physical abuse," in this context, means conduct that amounts to cruel and unusual punishment.

Force that is inflicted maliciously and sadistically for the very purpose of causing harm constitutes cruel and unusual punishment and thus a violation of the Eighth Amendment. It is not unlawful for corrections officers to use force to maintain or restore discipline. Further, not every malevolent touch by a corrections officer violates the Eighth Amendment. In the prison setting, where corrections officers are permitted by law to exercise some force on inmates, it is reasonable for a corrections officer not to take note of force that does not rise to the level of a constitutional violation. It is also reasonable for a corrections officer to believe that lawful force is not "abuse."

Further, the grand jury was charged with taking evidence of alleged criminal acts by corrections officers

toward prison inmates. Conduct that does not constitute cruel and unusual punishment in violation of the Eighth Amendment is not such a criminal act. For a statement before the grand jury to constitute perjury, it must be material to the grand jury's investigation. Statements concerning conduct that is not criminal are not material statements.

Therefore, if you find that the conduct of correctional officers toward inmate Seaton while he was in Center did not constitute cruel and unusual punishment, then this conduct cannot be considered to be physical abuse.

The court rejected defendant Regan's proposed jury instruction primarily because of its lengthy explanation concerning what constitutes cruel and unusual punishment under the Eighth Amendment, particularly in view of the fact that the court carefully instructed the jury on cruel and unusual punishment in charging the jury as to the elements of the § 242 violations alleged in counts one, two, and four. In connection with counts one, two, and four, the court instructed the jury as follows:

Where a prison guard undertakes the use of force to resolve a disturbance, it is the Jury's duty to determine whether the force used by the prison guard was applied by him in a good faith effort to maintain or restore discipline or was applied by him maliciously and sadistically for the purpose of causing harm to the inmate. Force that is applied upon an inmate by a prison guard in a good faith effort to maintain or restore discipline does not violate the inmate's Eighth Amendment rights. However, force that is applied by the prison guard maliciously and sadistically for the purpose of causing harm to the inmate, violates the inmate's Eighth Amendment rights.

In charging the jury as to count five of the indictment, the court properly and concisely instructed the jury as follows:

Count five charges Defendant Regan with making a false declaration before the grand jury on February 1, 1996, in violation of § 1623 of Title 18 U.S.C., which provides in relevant part:

Whoever under oath . . . in any proceeding before . . . any court or grand jury of the United States knowingly makes any false material declaration . . . shall be [guilty of an offense against the United States].

In order to prove that Defendant Regan violated § 1623, the Government must prove beyond a reasonable doubt each of the following essential elements of § 1623:

1. that Defendant Regan testified under oath before a federal grand jury on February 1, 1996; and
2. that Defendant Regan made a false material declaration, as set forth in count five, during that grand jury testimony; and
3. that Defendant Regan knew that the declaration, as set forth in count five, was false when he gave the testimony before the grand jury.

As to the first element of § 1623, the evidence is uncontroverted that Defendant Regan testified before a federal grand jury on February 1, 1996.

As to the second element, the Government has the burden of proving beyond a reasonable doubt that the Defendant's answer of "No" to the question: "Did you see any physical abuse of that prisoner [Ronald Seaton -- count two] while you were in center" was a false material declaration. A declaration is material if it has a tendency to influence, impede, or hamper the grand jury from pursuing it's investigation.

As to the third element of § 1623, the Government has the burden of proving beyond a reasonable doubt that Defendant Regan knew that the declaration, as set forth in count five, was false when he gave the testimony before the grand jury.

As I have already explained to you, an act is done "knowingly" if it is done voluntarily and intentionally, and not because of mistake or accident.

Therefore, if you determine that the Government has proved beyond a reasonable doubt each of the essential elements of § 1623:

1. that Defendant Regan testified under oath before a federal grand jury on February 1, 1996; and
2. that Defendant Regan made a false material declaration, as set forth in count five, during that grand jury testimony; and
3. that Defendant Regan knew that the declaration, as set

forth in count five, was false when he gave the testimony before the grand jury,

THEN you must find Defendant Regan GUILTY as to count five of the indictment, provided it is the unanimous answer of the Jury.

If, on the other hand, you determine that the Government has failed to prove beyond a reasonable doubt any one of the essential elements of § 1623:

1. that Defendant Regan testified under oath before a federal grand jury on February 1, 1996; or
2. that Defendant Regan made a false material declaration, as set forth in count five, during that grand jury testimony; or
3. that Defendant Regan knew that the declaration, as set forth in count five, was false when he gave the testimony before the grand jury,

THEN you must find Defendant Regan NOT GUILTY as to count five of the indictment, provided it is the unanimous answer of the Jury.

#### Conclusion

Accordingly, for the reasons heretofore set forth, the court will deny the post-trial motions of defendants Alva Kulp, Charles Cartwright, and Michael Regan.

