

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

CHRISTOPHER KIESEL : CIVIL ACTION
 :
 v. :
 :
 CITY OF PHILADELPHIA, :
 RICHARD NEAL, CITY OF :
 PHILADELPHIA POLICE :
 DEPARTMENT and POLICE :
 OFFICER JOHN FABER : NO. 96-7966

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND FINAL JUDGMENT**

HUTTON, J.

May 4, 1998

In this action, Plaintiff Christopher Kiesel, a prisoner of the State of Pennsylvania, sues Defendants the City of Philadelphia, the Philadelphia Police Department, Richard Neal, and Police Officer John Faber for damages arising from an unprovoked beating Faber inflicted upon Kiesel on November 29, 1994, while Kiesel was a pre-trial detainee at the Eighth Police District, Philadelphia, Pennsylvania. Originally, Kiesel charged the Defendants with violating 42 U.S.C. §§ 1983 and 1985 (1994) (Counts I and II), and committing civil assault and battery under Pennsylvania law (Counts III and IV). At the close of his case, however, Kiesel acknowledged that he could not prove his federal civil rights claims and elected to proceed with the assault and battery claim alone.

The Court held a bench trial on Kiesel's claims on January 12, 1998. In accordance with Federal Rule of Civil Procedure 52(a),

the Court now enters the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

1. In November, 1994, Plaintiff Christopher Kiesel was a prisoner of the State of Pennsylvania, awaiting trial on charges of burglarizing the apartment of Kenneth Roach, at 4743 Oakland Street, Philadelphia, Pennsylvania.

2. Defendant John Faber is a Police Officer in the Philadelphia Police Department. Faber's brother-in-law, Ronald Morocca, owned the Oakland Street property at the time of the burglary. Faber is also the step-father of Kenneth Roach, and kept personal property at the Roach residence, some of which apparently was stolen in the burglary. At some point before November 29, 1994, Faber and Roach discussed the burglary, and that Kiesel--a childhood acquaintance of Roach--had been charged with the crime.

3. On November 29, 1994, at approximately 11:00 a.m., Kiesel was detained in a holding cell at Philadelphia's Eighth Police District, awaiting a preliminary hearing in the Eighth District courtroom.

4. On that date, Philadelphia Police Officers Faber and Michael Hoelsworth were assigned to an emergency patrol wagon in the Eight Police District. In this capacity, the officers' duties included transporting prisoners between the district and any of the four city prisons located in northeast Philadelphia.

5. At approximately 11:00 a.m., Faber and Hoelsworth received a radio call instructing them to transport prisoners from the Eighth District. Among those prisoners was Kiesel, who was to be transported back to Holmesburg Prison after the court continued his preliminary hearing.

6. When Faber and Hoelsworth arrived at the Eighth District, the turnkey, Police Officer Robert Viereck, gave them the paperwork for three prisoners to be transported. Faber recognized Kiesel's name and associated it with the burglary.

7. Kiesel and the other prisoners in the Eighth District cell block were held individually, without hand cuffs or other restraints, in small steel-walled prison cells. The cells were arranged in a row, along a corridor, so that no prisoner could see into the cell of any other.

8. Faber and Hoelsworth proceeded from cell to cell along the corridor, asking each prisoner his name. Finally, Faber reached Kiesel--who was in the last cell--and asked Kiesel his name. When Kiesel responded, Faber indicated to the turnkey Viereck that "this is him." Viereck then tossed Faber the keys to Kiesel's cell.

9. Faber then unlocked the cell and stepped in. Kiesel picked up his jacket and stepped towards the cell door, expecting to be transported back to Holmesburg Prison. Instead, without any warning, Faber struck Kiesel on the left temple with his closed fist, knocking Kiesel onto the cell's metal bench.

10. Faber then struck Kiesel on the left side of the head between eight and twelve times. Kiesel fell against the metal bench, with the right side of his head against the steel wall of the cell, so that with each blow Faber knocked Kiesel's head against the cell wall as well.

11. Faber then slammed Kiesel against the cell wall, slapped him, and said "I didn't hit you that bad." He then handcuffed Kiesel, turned him to face the cellblock corridor wall, gave him his badge number and name, and said "go ahead and remember it. You can call whoever the fuck you want. I don't care, I'll even give you the quarter."

12. Faber and Hoelsworth then secured the other two prisoners to be transported, Marcus Hodge and Aaron Lambert, and put the three into the police wagon. Hodge and Lambert had heard the beating and expressed their sympathy. The police officers dropped Hodge and Lambert off at their respective prisons, leaving Kiesel alone in the wagon.

13. At one point, when Hoelsworth was returning Lambert to the House of Correction, Faber opened up the back of the wagon, identified himself to Kiesel as Kenneth Roach's step-father, and demanded to know the whereabouts of a Fisher stereo stolen from the Oakland Street property. Kiesel denied committing the burglary. Faber told him that if he really didn't commit the crime, he would try to help him out. Hoelsworth then returned from the House of Correction and the two officers transported Kiesel to Holmesburg Prison.

14. Prior to the November 29, 1994 beating incident, Kiesel had normal vision. About five months beforehand, Kiesel took and passed an eye exam required for obtaining a driver's license.

15. The beating left Kiesel dizzy, ill, and with lumps and bruises on his head. It also left Kiesel with blurry vision. Kiesel did not complain of these injuries to Faber and Hoelsworth, but immediately reported them to the prison officers when he arrived at the Holmesburg receiving room, and asked to see a ranking "white shirt" correctional officer with whom he could file a complaint.

16. That day, Kiesel filled out and signed a report outlining the circumstances of the assault. In the report he stated: "I was taken to court at the Eighth District. While there Officer Faber assaulted me because of a burglary charge I had. His badge number is 5633. He punched me in my head repeatedly, knocking my head into the steel wall of the cell I was in. Witness to incident is Marcus Hodge, J Unit PICC, and Aaron Lambert, F2, House of Correction."

17. That day, Kiesel also saw a Doctor Goldstein at the prison, who gave him painkillers. The following day, November 30, 1994, Kiesel felt dizzy and ill and signed up for a prison sick call. The doctor scheduled Kiesel to go to Philadelphia Detention Center for an eye exam.

18. About three weeks later, Kiesel had his eye exam. The test results showed that Kiesel needed glasses. The doctor gave

Kiesel a prescription for glasses, and Kiesel has worn glasses ever since.

II. CONCLUSIONS OF LAW

1. Under Pennsylvania law, an assault occurs when one acts with the unprivileged intent to put another in reasonable and immediate apprehension of a harmful or offensive conduct and does in fact cause such apprehension. See Stilley v. University of Pittsburgh, 968 F. Supp. 252, 259 (W.D.Pa. 1996) (quoting Proudfoot v. Williams, 803 F. Supp. 1048, 1054 (E.D.Pa. 1992)).

2. Likewise, "the elements of the tort of battery are a harmful or offensive contact with a person, resulting from an act intended to cause the plaintiff or a third person to suffer such a contact, or apprehension that such a contact is imminent." Moser v. Bascelli, 865 F. Supp. 249, 252 (E.D.Pa. 1994) (quoting Levenson v. Souser, 557 A.2d 1081, 1088 (Pa. Super. Ct.), appeal denied, 571 A.2d 383 (Pa. 1989)); Herr v. Booten, 580 A.2d 1115, 1117 (Pa. Super. Ct. 1990).

3. In the present case, the Court easily finds by a preponderance of the evidence that Officer John Faber committed assault and battery against Christopher Kiesel, when he subjected him to the November 29, 1994 jailroom beating. However, Kiesel did not bring forward sufficient evidence to implicate any of the other defendants as directly liable in the beating incident.

4. The Court finds the Defendants' testimony that Faber was required to use force to contain Kiesel, and that Kiesel's injuries

were self-inflicted, to be uncreditable. Therefore, Faber has not established that he was either privileged or reasonable in administering the beating.

5. Finally, the Court finds that as a direct result of the beating Kiesel sustained both short term bruises and permanent visual impairment. For these injuries, the Court awards Kiesel compensatory damages in the amount of Ten Thousand Dollars (\$10,000.00).

This Court's Final Judgment follows.

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FINAL JUDGMENT

AND NOW, this 6th day of May, 1998, as required by Fed. R. Civ. P. 52, IT IS HEREBY ORDERED that this Court enter the attached Findings of Fact and Conclusions of Law.

IT IS FURTHER ORDERED that **JUDGMENT** is entered **IN FAVOR OF** Plaintiff Christopher Kiesel and **AGAINST** Defendant Police Officer John Faber in the amount of Ten Thousand Dollars (\$10,000.00).

BY THE COURT:

HERBERT J. HUTTON, J.