

ordinarily prudent person would employ in similar circumstances. *Smith v. United Properties, Inc.* (1965), 2 Ohio St.2d 310.

{¶ 4} Ohio Adm.Code 5120-9-01 sets forth the circumstances in which force may be lawfully utilized by prison officials and employees in controlling inmates. Ohio Adm.Code 5120-9-01(C) states in relevant part:

{¶ 5} "(2) Less-than-deadly force. There are six general circumstances in which a staff member may use force against an inmate of third person. A staff member may use less-than-deadly force against an inmate in the following circumstances:

{¶ 6} ****

{¶ 7} "(b) Defense of another from physical attack or threat of physical attack.

{¶ 8} "(c) When necessary to control or subdue an inmate who refuses to obey prison rules, regulations or orders.

{¶ 9} "(d) When necessary to stop an inmate from destroying property or engaging in a riot or disturbance. ****"

{¶ 10} This court has previously noted that "corrections officers have a privilege to use force upon inmates under certain conditions. *** However, such force must be used in the performance of official duties and cannot exceed the amount of force which is reasonably necessary under the circumstances. *** Force may be used to control or subdue an inmate in order to enforce the institution's rules and regulations. *** Obviously, 'the use of force is a reality of prison life' and the precise degree of force required to respond to a given situation requires an exercise of discretion by the corrections officer." *Mason v. Ohio Dept. of Rehab. & Corr.* (1990), 62 Ohio Misc.2d 96, 101-102. (Citations omitted.)

{¶ 11} With regard to the June 18, 2003, incident, plaintiff offered the testimony of several inmates who were present at the time of the incident. Inmate Vernon Mayse testified that the fight lasted 15-20 minutes, that it had ended three minutes before the COs arrived, and that plaintiff was standing upright just before he was tackled by Sponhaltz. Inmate Wesley Compton, Jr. claimed that CO Bowen took down both inmates while they were still fighting and that plaintiff was tackled by CO Sponhaltz as he was trying to stand. Inmate Elvin Burkhart testified that the fight lasted about four minutes before it was broken up and that plaintiff was either standing or kneeling when he was tackled. Burkhart also witnessed plaintiff being escorted away and stated that he was walking without assistance.

{¶ 12} According to plaintiff, his fight with inmate Hauger lasted about two and one-half minutes and ended when he dropped to his knees and raised his hands after he saw COs running towards him. Plaintiff stated that Sponhaltz lunged at him and as he fell he felt his foot turn inward. Plaintiff was handcuffed and taken to the captain's office where he complained of ankle pain. At the infirmary, a nurse wrapped his ankle. He was then taken to isolation. A few days later, x-rays were taken and it was determined that plaintiff's ankle was broken.

{¶ 13} At the time of the incident, Sponhaltz had four years experience as a CO at Lebanon Correctional Institution. His duties included supervising inmates and maintaining security within the institution. He attended the Correctional Training Academy where he was taught such subjects as use-of-force, security, and self-defense. Additionally, Sponhaltz completed yearly re-certification training in order to maintain his position as a CO.

{¶ 14} Sponhaltz testified that on the day in question he witnessed plaintiff fighting with another inmate. Upon notifying the other officer on duty, Sponhaltz proceeded to the area where plaintiff and another inmate were grappling with each other on the ground. When Sponhaltz ordered them to stop fighting, plaintiff complied by lying down on the floor. Sponhaltz denied tackling plaintiff. Sponhaltz stated that he then ordered plaintiff to place his hands behind his back and that plaintiff was subsequently handcuffed. Sponhaltz testified that at no time did plaintiff appear injured or complain that he was injured.

{¶ 15} Sponhaltz completed an incident/use-of-force report and a conduct report. He explained that the handcuffing technique is considered use-of-force under any circumstance and that defendant's policy requires him to submit a report to the captain whenever an inmate is handcuffed. Additionally, inmate fights are considered rule violations and COs must file a conduct report against the offending inmates.

{¶ 16} Major George Crutchfield, Lebanon's chief security supervisor, was acting deputy warden of operations at the time of the incident. He explained that it is the deputy warden's duty to review use-of-force reports. If it is determined that an employee's use of force exceeds that which is permitted under Ohio Adm.Code 5120-9-01, the report will be forwarded to a neutral committee for further review. Upon examination of the incident and conduct reports and plaintiff's medical records, both Crutchfield and the warden determined that Sponhaltz had used only slight force and that no further investigation was necessary. (Defendant's Exhibit D.)

{¶ 17} The court's determination whether defendant breached a duty to plaintiff turns on witness credibility. "In determining the issue of witness credibility, the court considers the appearance of each witness upon the stand; his manner of testifying; the reasonableness of the testimony; the opportunity he had to see, hear, and know the things about which he testified; his accuracy of memory; frankness or lack of it; intelligence, interest, and bias, if any; together with all facts and circumstances surrounding the testimony." *Adair v. Ohio Dept. of Rehab. & Corr.* (1998), 96 Ohio Misc.2d 8, 11; See 1 Ohio Jury Instructions (1994), Section 5.30.

{¶ 18} In considering the testimony of all the witnesses and applying the criteria in *Adair*, supra, the court finds the testimony of Sponhaltz to be the more credible. Based upon the totality of the evidence presented, the court finds that plaintiff's conduct on June 18, 2003, required intervention by defendant's employees and that Sponhaltz did not violate Ohio Adm.Code 5120-9-01 in his effort to control plaintiff. The court also finds that Sponhaltz used only the amount of force reasonably necessary to enforce the lawful rules and regulations of the institution and his handcuffing procedures did not cause injury to plaintiff.

{¶ 19} For the foregoing reasons, the court concludes that plaintiff has failed to prove his claim by a preponderance of the evidence. Accordingly, judgment is recommended in favor of defendant.

{¶ 20} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the court's adoption of any*

finding or conclusion of law contained in the magistrate's decision unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).

STEVEN A. LARSON
Magistrate

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