UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY Civil Action No. 08-130

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DEC - 8 2009

In Regard to the Matter of:

JOEL SCHME ... U.S. Magasine

Bayside State Prison OPINION/REPORT Litigation

OF THE SPECIAL MASTER

JOSEPH CARTER

-vs-

WILLIAM H. FAUVER, et al, Defendants.

TUESDAY, OCTOBER 27, 2009

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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                     Transcript of proceedings in the above
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     matter taken by Theresa O. Mastroianni, Certified
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      Court Reporter, license number 30X100085700, and
     Notary Public of the State of New Jersey at the
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     United States District Court House, One Gerry Plaza,
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     Camden, New Jersey, 08102, commencing at 3:11 PM.
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- 1 JUDGE BISSELL: I'm reopening
- 2 proceedings in the case of Joseph Carter, docket
- 3 number 08-130.
- 4 This opinion/report is being issued
- 5 pursuant to the directives of the Order of Reference
- 6 to a Special Master and the Special Master's
- 7 Agreement and the guiding principles of law which
- 8 underlie this decision to be applied to the facts
- 9 upon which it is based as set forth in the jury
- 10 instructions in the Walker and Mejias jury charges to
- 11 the extent applicable to the allegations of Mr.
- 12 Carter.
- 13 As finalized after review under Local
- 14 Civil Rule 52.1, this transcript will constitute the
- 15 written report required under paragraph seven of the
- 16 Order of Reference to a Special Master.
- Joseph Carter testified that he was
- 18 housed in Trailer Number Two at Bayside State Prison
- 19 on the day that particular unit was searched and in
- 20 which there was a movement of prisoners to the gym.
- 21 The record establishes that that was August 11th,
- 22 1997. He alleges that there were three assaults
- 23 committed upon him in the course of that day. To
- 24 paraphrase them briefly, he said that one of them
- 25 occurred in the dayroom of Trailer Number Two where

- 1 he was made to lie on top of another inmate and when
- 2 that inmate could no longer support his weight and
- 3 both of them tumbled to the floor, they were both
- 4 assaulted by corrections officers apparently
- 5 witnessing this for sport.
- The second assault to him he alleges
- 7 occurred in the back of the gym when he was in a
- 8 situation where he could not tolerate the position in
- 9 which he was sitting. He said several officers took
- 10 him to the back of the gym and then proceeded to beat
- 11 him back there, even though there were Internal
- 12 Affairs personnel and administrative personnel in the
- 13 vicinity, at least slightly outside the door to the
- 14 gym. And despite that, he claims that this beating
- was administered to him at that time and place.
- 16 He alleges that a third incident
- occurred around the side of Center Control where,
- 18 after his session in the gym, he was put up against
- 19 the wall. He received multiple beatings and
- 20 kickings, and among other things, there was a dog
- 21 there with him from the K-9-unit who was released and
- 22 bit him on the calf and gave him puncture wounds on
- 23 his calf.
- However, evidence to the contrary,
- 25 including testimony from his own deposition,

- 1 demonstrates that at the very least Mr. Carter has
- 2 failed to sustain his burden of proving the claims
- 3 which he asserts.
- 4 In his deposition he specifically
- 5 stated that he had not been assaulted in the gym,
- 6 and, certainly not to the satisfaction of this finder
- 7 of fact, could he explain the discrepancy between his
- 8 testimony before me in this court in June of 2009 and
- 9 the contents of his deposition. Cross-examination
- 10 reflecting that discrepancy appears at page 58
- 11 through 60 of the testimony before me on June 17th,
- 12 '09.
- Also, in the course of his deposition
- 14 he had stated that, as far as any assaults in the
- unit were concerned, they were basically minor prods
- 16 and hits, and it only happened to him twice until he
- 17 was outside of the unit going to the gym. His
- 18 deposition made no reference to the incident on the
- 19 floor with the other inmate, and, once again, he had
- 20 no good explanation for this discrepancy between his
- 21 deposition testimony and his testimony at trial. The
- 22 examination that points out those discrepancies took
- 23 place before me between pages 62 and 65 in the
- 24 June 17th transcript.
- 25 Finally, as far as the attack and

- 1 biting by the dog is concerned, I determine that that
- 2 essentially is fantasy and could not have been as he
- 3 described it. Officer Ruiz testified here yesterday
- 4 that he was the one who had the Rottweiler that was
- 5 present on the premises. My recollection is that Mr.
- 6 Carter testified that it was that type of dog that
- 7 was brought into play.
- 8 In any event, Officer Ruiz testified
- 9 not only did this not happen or ever occur while he
- 10 was on the premises (virtually on a daily basis)
- 11 throughout the lockdown with his Rottweiler, but it
- 12 could not have occurred based upon the manner in
- 13 which the dogs are employed. Among other things, the
- 14 officer testified, and I believe credibly, that he
- 15 would not release a dog upon a group of people. In
- 16 this instance by the recounting of Mr. Carter
- 17 himself, he was in the course of being beaten by
- 18 corrections officers along this wall on the side of
- 19 Center Control. Hence, there were at least three of
- 20 them, if not more, in close proximity to each other.
- 21 As Officer Ruiz testified, the dog is not in a
- 22 position to distinguish between one person and
- 23 another. Accordingly, since the dog would only
- 24 attack on command and would only be able to come into
- 25 contact with persons upon being released and ordered

- 1 by Mr. Ruiz, he would never have done such a thing.
- 2 The dog could have focused his attention on any of
- 3 the three people allegedly involved.
- 4 Secondly, this dog, and K-9 dogs
- 5 generally administered by SOG officers trained for
- 6 this type of duty, would not merely bite and release
- 7 a person, such as Mr. Carter characterized the bite
- 8 to his calf, but would bite and hold until ordered by
- 9 its handler to release the person. There is no such
- 10 testimony even by Mr. Carter that this is what
- 11 occurred to him. Nor, once again, would there have
- 12 been any reason for this.
- Finally, Mr. Carter testified at least
- 14 during one portion of his journey on August 11th that
- 15 there was a mixture of SOG and Bayside officers
- 16 involved in his transport and assault. The record
- 17 reveals, however, quite clearly, that all of the
- 18 transport duties which would have occurred on this
- 19 day, as they did with others involving persons taken
- 20 from the units so those units could be searched, were
- 21 done by SOG officers only.
- To summarize briefly, I find Mr.
- 23 Carter's testimony before me not credible and refuted
- 24 by credible and competent evidence to the contrary.
- 25 And accordingly, I find that he has not sustained his

Page 9 burden of proof by a preponderance of the credible evidence before me. Finally, although not every item of evidence has been discussed in this opinion/report, all evidence presented to the Special Master was reviewed and considered. For the reasons set forth above, I recommend in this report that the district court enter an order and judgment of no cause for action with regard to Joseph Carter. (Hearing Adjourned) 

1	CERTIFICATE
2	
3	I, Theresa O. Mastroianni, a Notary Public and
4	Certified Shorthand Reporter of the State of New
5	Jersey, do hereby certify that the foregoing is a
6	true and accurate transcript of the testimony as
7	taken stenographically by and before me at the time,
8	place, and on the date hereinbefore set forth.
9	I DO FURTHER CERTIFY that I am neither a
10	relative nor employee nor attorney nor counsel of any
11	of the parties to this action, and that I am neither
12	a relative nor employee of such attorney or counsel,
13	and that I am not financially interested in the
14	action.
15	
16	
17	
18	
19	<u>Meresa O. Mastroianni</u> Theresa O. Mastroianni, C.S.R.
20	Notary Public, State of New Jersey
21	My Commission Expires May 5, 2010 Certificate No. XIO857
22	Date: October 27, 2009
23	
24	
25	

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