

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
Civil Action No. 09-269

RECEIVED  
JAN 28 2010

In Regard to the Matter of:

Bayside State Prison  
Litigation

OPINION/REPORT  
OF THE  
SPECIAL MASTER

ANDRE JARRELLS

-vs-

WILLIAM H. FAUVER, et al,  
Defendants.

JOEL KORNBLUM  
U.S. Magistrate Judge

\* \* \* \*

FRIDAY, DECEMBER 11, 2009

\* \* \* \*

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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Transcript of proceedings in the above  
y Theresa O. Mastroianni, Certified  
, license number 30X100085700, and  
of the State of New Jersey at the  
District Court House, One Gerry Plaza,  
rsey, 08102, commencing at 11:52 AM.

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1                   JUDGE BISSELL: I'm now reopening  
2 proceedings in the case of Andre Jarrells, civil  
3 docket number 09-269.

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 Jarrells.

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.

17                  Andre Jarrells was also a resident of D  
18 Tent and testified with regard to alleged assaults  
19 against him while in that facility. His testimony  
20 regarding the conduct directed against him can best  
21 be described in three short excerpts from his  
22 testimony before the Special Master on February 20th,  
23 2009.

24                  Beginning at the top line of page ten.  
25                  "Question: And when was the first time

1 you knew something was wrong relative to Baker being  
2 killed?

10 "Answer: Kick us. Hit us with the --  
11 I got punched in the face. And spitting on us.  
12 Degrading us. We didn't know what we were doing.  
13 What did we do wrong?

23 "Question: How about Robin Lewis?

24 "Answer: He slept across from me.

25 "Question: Now, you've described them

1 coming in, did they tell you to get on the ground or  
2 get on the bed?

3 "Answer: Get on the ground.

4 "Question: Were you assaulted that  
5 day?

6 "Answer: Yes.

7 "Question: How many different days can  
8 you estimate you were assaulted by guards during the  
9 lockdown?

10 "Answer: Everyday for the first two  
11 weeks. At least everyday, once a day.

12 "Question: And how did that occur, can  
13 you describe that?

14 "Answer: They just came in and started  
15 beating on people. Get on the bed. Just kicking  
16 people for no reason. We didn't get to take showers.  
17 We ate cold food. Drunk sour milk. Just terrible.

18 "Question: Were you beaten by fists  
19 and kicks?

20 "Answer: Yes, sir.

21 Another excerpt appears at page 13,  
22 lines 12 through 17.

23 "Question: On the first day where you  
24 say they came in, made you lay on the floor and beat  
25 you, did they use clubs that day?

11 Page 13, line 22 Mr. Jarrells states:

21 He continues.

24 "Answer: Yes.

25 "Question: The men that kicked

1 Mr. Sweeten, were they SOGS?

2 "Answer: Some were SOGs, some were  
3 correction officers. But you really couldn't tell  
4 because they was in full riot gear. Fortunately,  
5 some of the ones we knew before they put the riot  
6 gear on, you could see through the glass the face to  
7 see who it is.

8 "Question: So it was a combination of  
9 SOG and regular corrections officers?

10 "Answer: Yes, sir."

11 Now, we know from ample testimony  
12 throughout these proceedings that the Bayside Prison  
13 Officers did not don riot gear to assist the SOGs in  
14 inmate extractions. That would be particularly the  
15 case here when you are involved in a tent with only  
16 ten inmates, that testimony is just plain false.

17 Further at page 22, line 21 and further  
18 on. This is, of course, cross-examination.

19 "Question: Beginning July 30, 1997,  
20 you were beaten everyday by Bayside and/or SOG  
21 officers; is that correct?

22 "Answer: Yes, sir.

23 "Question: And you claim that occurred  
24 for about 30 days; is that correct?

25 "Answer: The whole thing lasted about

1 30 days. I didn't get beat 30 days.

2 "Question: And during that 30 days you  
3 claim that you were struck with night sticks at least  
4 55 times; is that correct?

5 "Answer: That's right. Every time  
6 they came in.

7 "Question: And you were kicked by  
8 those officers at least one hundred times; is that  
9 correct?

10 "Answer: Yes, sir. If you add it all  
11 up, I try not to remember it, but --

12 "Question: I can imagine.

13 "Answer: Yes, sir."

14 There then follows in the course of  
15 this plaintiff's testimony a long list of Bayside  
16 Prison Officers who allegedly committed these  
17 multiple assaults on virtually a daily basis  
18 throughout the lockdown. Of course, because as I  
19 find this is a fabrication, there is inconsistent  
20 testimony by Mr. Jarrells between his testimony  
21 before the Special Master and his deposition,  
22 particularly with regard to the names of the officers  
23 at Bayside whom he lists as persons who assaulted  
24 him. Among the officers named, at least three  
25 testified in this case whose comments are worth

1 discussing.

2 Officer Roberts testified that during  
3 the lockdown he was never assigned to the tents at  
4 all. Secondly, that Bayside Prison Officers did not  
5 don riot gear and did not employ night sticks in the  
6 course of their duties during the lockdown or  
7 generally. Officer Pfirman testified also that  
8 although named by Mr. Jarrells as one of the persons  
9 who assaulted him, he was never assigned to the tents  
10 during the lockdown either.

Officer Fisher was assigned to the tent area, but he was the quarter master for the tents involved in the distribution of supplies and the like as he described it. Hence, he would not have drawn an assignment for the evacuation of inmates from any one or more of the tents and never assaulted a prisoner, as he so testified. On the other hand, because of his position as the quarter master, he is a person whom inmates housed in the tents would have known.

21 If the inherent incredibility of Mr.  
22 Jarrells' testimony and the refutation by some of the  
23 officers whom he named were not enough, the testimony  
24 of Barry Sweeten contradicts it as well. Mr. Sweeten  
25 testified before this Special Master on January 20th,

1 2009, and some excerpts of his testimony warrant  
2 reading here. One of them begins at page 70, line 12  
3 of the transcript and continues to page 72, line 17.

4 I might add here parenthetically that  
5 the testimony of Inmates Jarrells, Lewis and Sweeten  
6 was all offered on behalf of those respective  
7 plaintiffs for the case of each of them. Back to the  
8 quotation.

9 "Question: So the only time that you  
10 recall SOG officers coming to your tent was on what  
11 you claim to be August 15th, 1997, correct?"

12 Parenthetically, the record is the 14th.

13 "Answer: Yes, sir.

14 "Question: The day in which the  
15 inmates were transferred to the gymnasium?

16 "Answer: Yes, sir.

17 "Question: And at no other time during  
18 the lockdown did any SOG officers come into your  
19 tent?

20 "Answer: That's correct.

21 "Question: And you had never seen any  
22 inmates, therefore, you had never seen any other  
23 inmates who were in D Tent be beaten on any other  
24 occasion?

25 "Answer: Not after that day, no, sir.

5 "Answer: That's correct.

20 "Answer: Yes.

21 "Question: Right, shower breaks?

22 "Answer: That's correct.

1      recollection of any of those housing officers coming  
2      into D Tent and assaulting any inmates during the  
3      lockdown?

4                 "Answer: Not in my presence, no.

5                 "Question: And how about any Bayside  
6      Officer, do you have any recollection of any Bayside  
7      Officer that you could identify as a Bayside Officer  
8      coming in your tent, D Tent, and assaulting any  
9      inmates while you were there?

10                "Answer: No, sir.

11                "Question: So is it fair so say,  
12      Mr. Sweeten, that the only assaults that you claim to  
13      have seen was on that particular day?

14                "Answer: That's correct.

15                "Question: Of what you claim to be  
16      August 15th, correct?

17                "Answer: Yes, sir.

18                "Question: Whether it be your own or  
19      other inmates?

20                "Answer: Yes, sir."

21                Testimony also continues on the  
22      following page, it's page 73, lines seven through 15.

23                "MR. ROSELLI: Just a follow-up to  
24      that, your Honor, I'm sorry.

25                "Question: So then it's clear, then,

1 you did not witness Bayside Officers or SOG officers  
2 come into D Tent on any other occasion, assaulting  
3 inmates in D Tent?

4 "Answer: Not after that date, no.

5 "Question: And/or before?

6 "Answer: That's correct."

7 In summary, Mr. Jarrells effort to  
8 generate a claim for himself is based, I conclude,  
9 upon the arrival of a SOG team in the tent on  
10 August 14th, 1997. Upon his witnessing the assaults  
11 that did, in fact, occur to Mr. Sweeten, and which  
12 have served as a successful cause of action for him  
13 in these matters, and then deciding to jump on this  
14 band wagon. But he wasn't going to limit himself to  
15 a single event on a single date. Rather, he  
16 fabricated this totally incredible story about  
17 beatings right there in this small confines of Tent D  
18 day after day after day after day.

19 Mr. Sweeten, to his credit, whom I  
20 found to be credible in his own case, refutes that in  
21 his testimony under oath before me and I find the  
22 latter to be much more credible.

23 Finally, although not every item of  
24 evidence has been discussed in this opinion/report,  
25 all evidence presented to the Special Master was

1 reviewed and considered.

2 For the reasons set forth before, I  
3 recommend in this report that the District Court  
4 enter an order and judgment of no cause for action  
5 with regard to Andre Jarrells.

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C E R T I F I C A T E

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.

Theresa O. Mastroianni  
Theresa O. Mastroianni, C.S.R.  
Notary Public, State of New Jersey  
My Commission Expires May 5, 2010  
Certificate No. X10857  
Date: December 15, 2009

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