

resulted in substantial personal injury.

{¶2} According to plaintiff, "[o]n January 1, 2004, at about 12:10 Am, inmates at Toledo Correctional Camp started to riot on the west side dorm." Apparently, plaintiff was housed among the described rioting inmates in the west side dorm area of ToCI. Plaintiff related that when this inmate disorder began he approached a ToCI Corrections Officer and requested he be allowed to leave the dorm area and sit out the disruption in the institution restroom or dayroom. Plaintiff further related the Corrections Officer refused his request and ordered him to return to his bunk, back into a crowd of disruptive inmates. Plaintiff complied with the order to return to his bunk. Plaintiff stated that a short time after he returned to his bunk he was struck in the face by a bar of soap. Plaintiff noted he then approached the Corrections Officer again, asked for protection, and was removed from the area to receive medical attention for the facial injury he suffered from the bar of soap.

{¶3} Plaintiff offered observed details of the January 1, 2004, incident he characterized as a riot. Plaintiff recalled, "the inmates on the second and third rows of the Toledo Correctional Institution Camp Dorm, started throwing state issued blue soap, state issues booths, state issue tissue paper set a fire and commissary purchased batterys [sic] at the officers working the dorm this night." Plaintiff explained his assigned sleeping area was near the dorm entrance/exit and therefore, he was positioned, "in direct line of fire once the throwing started, at which time I requested of staff to go into the dayroom or restroom to avoid getting injured." When this request to leave was refused, plaintiff recollected he was ordered to return to his bunk and remain on the bunk. Plaintiff noted he was hit in the mouth with a bar of thrown soap at sometime after he returned to his bunk. Plaintiff estimated he was struck by the bar of soap about fifteen to twenty minutes after the inmate disorder began. Plaintiff

observed, "[w]hen the throwing first started the officer,s [sic] ran from the dorm out into the day room and from that point watched the dorm through the window from the day room." Plaintiff related the lights in the dorm remained off during the entire length of the January 1, 2004, inmate disruptive activity.

{¶4} Defendant acknowledged an inmate disturbance occurred at ToCI just after midnight on January 1, 2004. Furthermore, defendant affirmed several inmates approached corrections officers requesting to be permitted to leave the dorm area, but were ordered to return to their bunks. Defendant also acknowledged plaintiff suffered an injury to his lower lip which was treated at approximately 12:50 a.m. on January 1, 2004. According to defendant, plaintiff did not seek additional medical care after his initial treatment, although plaintiff related he received follow-up care on January 5, 2004.

{¶5} Defendant denied any liability for plaintiff's injury. Defendant asserted ToCI personnel responded correctly and followed standard policies when reacting to the January 1, 2004, inmate disturbance. Defendant denied having any prior knowledge that any disruptive activity was likely to occur. Defendant denied ToCI staff breached any duty of care owed to plaintiff by ordering him to return to his bunk after the disorder began. Defendant contended plaintiff has failed to produce sufficient evidence to establish his injury was the proximate result of any negligent act or omission on the part of ToCI employees in regard to their response to the January 1, 2004 disorder.

{¶6} Plaintiff related inmate riots have occurred at ToCI every New Years Eve for the past four years. Therefore, plaintiff suggested defendant should have known a riot was likely to occur on January 1, 2004. Plaintiff professed defendant did not take any measures to prevent or inhibit rioting activity on New Years Eve. Additionally, plaintiff contended ToCI staff were under a duty to protect him and provide him a safe haven from the disruption when

he made requests to be allowed to leave the area. Plaintiff argued ToCI personnel were negligent in ordering him to return to his bunk and, thereby, knowingly subjecting him to the risk of injury.²

{¶7} Plaintiff submitted a copy of a document described as page 44 of the Toledo Correctional Camp Handbook. Under the heading Introduction to the ToCI Camp is the following instruction: "[b]e aware that the officers are here for your safety and security." Plaintiff asserted this handbook instruction constituted ToCI policy and defendant's corrections officers violated this mandated policy by ordering him to return to an unsafe unsecure area after he asked to be moved to a place of safety. Plaintiff implied the corrections officers acted negligently and violated policy when ordering him to return to an area where his risk of injury was enhanced.

{¶8} Plaintiff also submitted a copy of defendant's policy directive pertaining to the subject: Protection From Harm and Inappropriate Supervision. Under the heading Policy is the following language: "[i]t is the policy of the Ohio Department of Rehabilitation and Correction that no inmates will be subjected to personal abuse, corporal punishment, personal injury, disease, property damage, and harassment." Plaintiff asserted he was subjected to personal injury by ToCI personnel when he was ordered to return to his bunk in the midst of rioting inmates. Plaintiff argued defendant violated policy with this order which constituted a negligent act that proximately led to his injury. Plaintiff maintained ToCI corrections officers had a duty to protect him and refused to offer him requested protection. This refusal, plaintiff professed, constituted actionable negligence with resulting personal injury.

{¶9} Plaintiff filed statements from three fellow inmates, James Moton, Lorenzo Morns, and Gary A. Carr, Jr. These statements

² Plaintiff filed a response on September 16, 2004.

provide personal recollections of the inmate disorders occurring on January 1, 2004, and past years. James Morton provided the following narrative:

{¶10} "That myself and Inmate Earl Starks, Jr #206-204 were assigned too bed #101 on the west side of the dorm, At Toledo Correctional Camp. This bed is located at the exit and entry of the dorm. New Years Eve of 2004, the Inmates on the west side of the dorm started rioting at approximately 12:10 AM, throwing batterys, soap, toilet paper rolls set on fire at the dorm Officers. The Officers then ran from the dorm, most of the objects that were thrown at the Officers landed in my and Stark's sleeping area. I disobayed a direct order and got off of the TOP BUNK and got down on the floor under the bottom bunk to protect myself. My bunkie (Starks) ran out of the dorm to the Officer station to get out of the line of fire and to request protection. The Officers gave Inmate Starks A direct order to return to his bed. He did so and was then struck in the mouth with a bar of soap. I have been at Toledo Correctional Camp for two (2) Years and each year there has been rioting." [sic]

{¶11} Lorenzo Morns made these notations:

{¶12} "New Years Eve of 2003, I was an inmate housed at Toledo Correctional Camp. That morning inmates began throwing objects at the dorm Officers. Officer Quinn was hit in the head with a battery and injured. Inmates whos bed were at the exit and entrey of the dorm were injured because they were made to remain in a dangerous area. This act of rioting has occurred for several years on Jan first and nothing has been done to provent it." [sic]

{¶13} Gary A. Carr, Jr. noted the following recollection:

{¶14} "That on News Years Eve of 2001-2002-2003 and 2004 I was a inmate housed at the Toledo Correctional Camp. The four (4) years I have been present at Toledo Correctional Camp, there has been a riot in the dorm. On New Years 2003 a female Correctional Officer was hit in the head with a battery and injured. No steps have been taken to provent this from happing again. The rioting happens every year and staff

and inmate are injured. It should also be noted that each side of the dorm has two (2) cameras." [sic]

{¶15} In order to prevail, plaintiff must prove by a preponderance of the evidence that defendant owed him a duty, that defendant breached that duty, and that defendant's breach proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282, 285. Ohio law imposes a duty of reasonable care upon the state to provide for its prisoner's health, care, and well-being. *Clemets v. Heston* (1985), 20 Ohio App. 3d 132, 136. However, the state is not an insurer of inmate safety. See *Williams v. Ohio Dept. of Rehab. & Corr.* (1991), 61 Ohio Misc. 2d 699. The duty owed by defendant to prisoners includes a duty to protect prisoners from unreasonable risk of harm. See *McCoy v. Engle* (1987), 42 Ohio App. 3d 204 and *Woods v. Ohio Dept. of Rehab. & Corr.* (1998), 130 Ohio App. 3d 742.

{¶16} In the instant claim, ToCI personnel were presented with a known dangerous situation which started on New Years Eve 2003. Evidence has shown similar dangerous situations involving inmate disturbances had occurred on several prior years on New Years Eve. After being on notice of these prior disturbances defendant did not heighten security or take other measures to quell disruptive activity likely to occur in the early morning hours of January 1, 2004. When disorder began at ToCI shortly after midnight on January 1, 2004, plaintiff asked to be removed from the disruptive situation. However, plaintiff's request was refused and he was ordered to return to an area where the risk of injury was enhanced. By this act, the court concludes, defendant breached its duty of care to protect plaintiff from a known unreasonable risk of harm. This breach of duty proximately caused the injury to plaintiff's lip. Consequently, defendant is liable to plaintiff for the injury he suffered.

{¶17} Plaintiff has asserted he sustained damages in the amount of \$2,500.00, which includes claims based on pain and suffering, anguish over a facial disfigurement, a claimed speech disorder, and presumed fear response whenever he is given a direct order by a corrections officer. The court recognizes plaintiff may offer subjective narrative statements concerning his perceived damages. However, the trier of fact is free to believe all, part, or none of the narrative presented. *Rogers v. Hill* (1998), 124 Ohio App. 3d 468.

{¶18} The documented evidence shows plaintiff suffered a lacerated lip .5

centimeters in length and .3 centimeters in depth. The affected area was not swollen. Plaintiff's injury was minor. Consequently, damages for this inconsiderable injury shall be determined accordingly. The trier of fact does not believe plaintiff experienced any damages beyond minor discomfort and he has failed to prove he suffered any permanent damages or damages lasting for any significant time past the initial trauma.

{¶19} The assessment of damages is a matter within the province of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42. Where the existence of damage is established, the evidence need only tend to show the basis for the computation of damages to a fair degree of probability. *Brewer v. Brothers* (1992), 82 Ohio App. 3d 148. Only reasonable certainty as to the amount of damages is required, which is that degree of certainty of which the nature of the case admits. *Bemmes v. Pub. Emp. Retirement Sys. Of Ohio* (1995), 102 Ohio App. 3d 782. Evidence has shown plaintiff suffered damages for pain and suffering resulting from his minor injury. The damages proven amount to \$25.00 for the personal injury involved, plus the \$25.00 filing fee, which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

IN THE COURT OF CLAIMS OF OHIO

EARL STARKS, JR.	:	
Plaintiff	:	
v.	:	CASE NO. 2004-04019-AD
TOLEDO CORRECTIONAL INSTITUTION	:	<u>ENTRY OF ADMINISTRATIVE DETERMINATION</u>
Defendant	:	
	:	

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of plaintiff in the amount

of \$50.00, which includes the filing fee. Court costs are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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10/7
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