

# Court of Claims of Ohio

The Ohio Judicial Center  
65 South Front Street, Third Floor  
Columbus, OH 43215  
614.387.9800 or 1.800.824.8263  
www.cco.state.oh.us

JOEY MARTIN

Plaintiff

v.

DEPARTMENT OF YOUTH SERVICES

Defendant

Case No. 2006-07635-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

{¶1} Plaintiff, Joey Martin, was a juvenile offender assigned to the custody of defendant's Ohio River Valley Juvenile Correctional Facility ("ORVJCF"). Plaintiff stated he was assaulted as he walked outside the ORVJCF cafeteria at approximately 7:30 a.m., on December 18, 2005. Plaintiff related Juvenile Corrections Officer ("JCO") Robert Patterson, "grabbed me from behind by one arm across my chest and the other around my neck." Plaintiff asserted that after he was physically restrained in the manner described, JCO Patterson forced him to the ground striking his face upon the concrete sidewalk outside the ORVJCF cafeteria. According to plaintiff, he was then punched in the eye several times by JCO Patterson. Plaintiff recalled, "[m]y whole unit witnessed this." However, plaintiff did not submit any witness statements concerning the described incident or provide any other documentation regarding a use of force event on December 18, 2005.

{¶2} Plaintiff contended JCO Patterson negligently used excessive force on him resulting in personal injuries. Plaintiff noted his personal injuries included a black eye, headache, and facial abrasions. Plaintiff filed this complaint seeking to recover \$2,500.00 in damages for the injuries he stated he suffered. Plaintiff argued defendant, Department of Youth Services ("DYS"), as the operator of ORVJCF, should bear responsibility for the acts of DYS employee, JCO Patterson. Plaintiff was not required

to pay a filing fee to prosecute this action.

{¶13} Defendant acknowledged a physical incident occurred between plaintiff and JCO Patterson on December 18, 2005. However, defendant denied JCO Patterson assaulted plaintiff or used physical force against plaintiff in the manner he described. Defendant noted an incident involving physical contact occurred outside the ORVJCF cafeteria on December 18, 2005. Defendant explained plaintiff was walking back to his living unit when he, “turned toward JCO Patterson in an aggressive manner with both fists clenched and began yelling at him.” Apparently, Patterson reacted to this described behavior by attempting to physically escort plaintiff along back to his living quarters. Defendant related that after this initial physical contact was made both plaintiff and Patterson fell to the ground where a struggle ensued. Defendant further related that plaintiff was seen by an ORVJCF nurse after the physical altercation with JCO Patterson. Plaintiff received treatment for “abrasions and swelling.” Subsequently, plaintiff was given medication when he complained of headaches. No additional treatment was sought by plaintiff. Defendant contended plaintiff has failed to prove sufficient facts to establish an actionable claim against DYS.

{¶14} In accordance with standard procedure, defendant conducted an investigation of the December 18, 2005 incident forming the basis of this claim. A written summary of the incident (initiated December 25, 2006) was submitted to the court. The summary contained impressions of the investigation officer, Randy Bickett, after conducting interviews with the principals involved including plaintiff, JCO Patterson, and witnesses. Bickett summarized that plaintiff and JCO Patterson were involved in a verbal altercation in the ORVJCF cafeteria which escalated into a physical struggle when Patterson tried to restrain plaintiff after he moved toward Patterson in an aggressive manner with clenched fists. Bickett reported during the struggle and effort to subdue plaintiff, plaintiff’s head made contact with the ground. Conflicting statements were filed regarding the circumstances surrounding how plaintiff received injuries to his head and face.

{¶5} Defendant submitted a statement from JCO Patterson (dated December 18, 2005) recording his recollections of the December 18, 2005 incident with plaintiff. Patterson recalled he was assigned to the ORVJCF cafeteria at mealtime and had just instructed all youth offenders under his charge to put on their coats and prepare to leave the cafeteria when he noticed plaintiff with his coat wrapped around his waist. Patterson stated he then ordered plaintiff to put his coat on correctly and he complied. Patterson then observed plaintiff walking to the cafeteria door wearing his coat with the hood down around his shoulders. Upon noticing the hood on plaintiff's coat, Patterson related he "instructed [plaintiff] to put on his hood and at that time [plaintiff] turned toward me in an aggressive manner with his fists (both) clenched and yelled," about being ordered to stand in a corner. Patterson explained plaintiff was referring to an incident earlier in the day when he was given a "time out" for cursing and disrupting cafeteria staff. Upon observing plaintiff's conduct involving the clenched fists and yelling, Patterson related he decided to restrain plaintiff with a "c-grip" hold on his right arm, but plaintiff tried to pull away as the hold was attempted. According to Patterson, he then "applied a rear finger flex on [plaintiff's] right arm and both I and [plaintiff] fell to the ground at that time." Patterson remembered that while he and plaintiff were on the ground, he ordered plaintiff to calm himself but he continued to struggle and would not comply with orders to put his hand behind his back to accept restraint. Patterson recorded he then received assistance from JCO Grimm in subduing plaintiff who finally ceased his struggling acts. Patterson stated plaintiff was then escorted back to the unit in handcuffs by two officers staff as well as supervisory staff were notified of the described incident.

{¶6} Defendant also submitted statements from three officers, JCO Robbins, JCO Grimm, and JCO Robinson, who witnessed the December 18, 2005 use of force incident and also assisted in restraining plaintiff. Robbins recorded he observed JCO Patterson attempting to instruct plaintiff, who "looked angry and was being very disruptive." Robbins also recorded he then heard plaintiff cursing at Patterson as well

as displaying clenched fists. Robbins wrote he saw Patterson try to physically control plaintiff and the struggle on the ground outside the ORVJCF cafeteria. Robbins reported he assisted in controlling plaintiff, but did not elaborate on the methods exercised in obtaining this control. JCO Grimm noted he was in the ORVJCF cafeteria on December 18, 2005, and witnessed the verbal exchange between JCO Patterson and plaintiff regarding plaintiff's coat. Grimm stated he heard plaintiff yell something and saw him make aggressive movements toward Patterson. Grimm further stated he saw Patterson attempt to use restraint techniques on plaintiff, the "c-grip" and "finger flex." Additionally, Grimm recalled witnessing both plaintiff and Patterson falling to the ground and plaintiff's continued struggling after being instructed to calm down. Grimm maintained he assisted in restraining plaintiff by pulling his left arm behind his back and applying a finger flex to his arm. Also, Grimm identified himself as the individual who handcuffed plaintiff. JCO Robinson wrote she arrived on the scene at the cafeteria to see Patterson and Grimm trying to gain control of plaintiff. Robinson related plaintiff "was being very combative trying to swing and kick staff." Robinson explained she assisted in securing plaintiff to prevent him from kicking any ORVJCF personnel.

{¶7} Defendant also submitted a written statement from plaintiff recorded approximately one hour after the use of force incident. Plaintiff asserted he was assaulted by JCO Patterson and noted he had marks on his face to prove he was the victim of an assault. Plaintiff additionally maintained he was threatened by JCO Patterson that he would receive more beatings. Plaintiff did not offer any further details regarding the relevant events occurring on December 18, 2005.

{¶8} At approximately 8:34 a.m. on December 18, 2005, plaintiff received a medical assessment at defendant's facility. This assessment was conducted by ORVJCF nurse, L. Whitt, R.N., who recorded plaintiff had multiple abrasions on his upper left cheek area and a small bruise on the bony orbit above his left eye. X-rays were taken of the bruised area. The abrasions were cleaned and treated with antibiotic ointment. Ice was applied to the bruise. According to Nurse Whitt's assessment report,

plaintiff denied suffering from headache, blurred vision, or nausea. A photograph of plaintiff's face was taken depicting the facial abrasions and bruise. The x-rays of plaintiff's facial bones were normal. The abrasions and bruise plaintiff suffered healed within days. Plaintiff subsequently complained of experiencing headaches and was given medication. Plaintiff did not receive any additional medical treatment after December 21, 2005 for the injuries he received on December 18, 2005. On January 22, 2006, JCO Grimm wrote a follow-up statement regarding more recollections about the events he witnessed on December 18, 2005. Grimm stated that when he saw plaintiff and JCO Paterson struggling on the ground, he observed plaintiff "attempting to push himself off the concrete by pressing his forehead on the ground in an attempt to gain leverage." Defendant suggested plaintiff essentially caused his own facial injuries that he attributed to the acts of JCO Patterson.

{¶9} Plaintiff's claim is grounded in negligence based on the contention defendant's employee, JCO Patterson used excessive force against him causing him undue personal injury. For plaintiff to prevail on a claim of negligence, he must prove, by a preponderance of the evidence, that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Armstrong v. Best Buy Company, Inc.* 99 Ohio St. 3d 79, 81, 2003-Ohio-2573, 788 N.E. 2d 1088, ¶18, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 472 N.E. 2d 707. This court has previously observed that "R.C. 5139.01(A)(3) expressly provides that '\*\*\* the department [of youth services] has the following rights and responsibilities: the right to have physical possession of the child; the right and *duty* to train, *protect*, and *control* \*\*\*' the children over which the defendant maintains legal custody." (Emphasis added.) *Shover v. Ohio Dept. of Youth Serv.* (Sept. 14, 1994), Ct. of Cl. No. 93-04176.

{¶10} In the instant claim, plaintiff has maintained he was deliberately injured by defendant's employee who was acting in the course and scope of his employment in carrying out defendant's policy. The events of December 18, 2005, were investigated and statements from both parties were submitted to the court for review.



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MEMORANDUM DECISION

{¶11} The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass* (1967), 10 Ohio St. 2d 230, 39 O.O. 2d 366, 277 N.E. 2d 212, paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Antill* (1964), 176 Ohio St. 61, 26 O.O. 2d 366, 197 N.E. 2d 548. The court does not find plaintiff's assertions particularly persuasive regarding the allegations that he was assaulted and the explanation concerning how he received his facial injuries. The trier of fact finds defendant's witnesses persuasive concerning the events of February 18, 2005. Furthermore, the court concludes the force used to restrain plaintiff did not constitute excessive force and therefore, plaintiff has failed to prove any elements of actionable negligence on the part of defendant.

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ENTRY OF ADMINISTRATIVE  
DETERMINATION

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 defendant. Court costs are assessed against plaintiff.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

Joey Martin  
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RDK/laa  
9/5  
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