

# 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

BILLY BARRETT

Plaintiff

v.

OHIO DEPARTMENT OF YOUTH  
SERVICES

Defendant

Case No. 2006-07643-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

{¶1} Plaintiff, Billy Barrett, stated he suffered personal injury on December 8, 2005, while incarcerated as a youth offender at the Ohio River Valley Juvenile Correctional Facility (“ORVJCF”), an institution operated by defendant, Department of Youth Services (“DYS”). Plaintiff related four employees of ORVJCF entered his room and placed him in handcuffs. Plaintiff identified the four ORVJCF employees as David Markins, Robert Gallion, Robert Patterson and John McQuithy. Apparently, all identified staff members held the title of Juvenile Corrections Officer (“JCO”). Plaintiff noted that after he had been handcuffed “Mr. Markins, Mr. Gallion, and Mr. Patterson threw me to the floor and slammed my face against the floor.” Plaintiff claimed he received a cut above his left eye when he was allegedly thrown to the floor. Plaintiff recalled he was removed from his room in handcuffs and placed in seclusion. Plaintiff alleged that while he was in the seclusion area he was pulled to the floor and repeatedly punched by ORVJCF staff, which included JCO Markins, JCO Patterson, JCO Gallion, and JCO McQuithy. Plaintiff further alleged he suffered cuts on his hands and arms from being improperly restrained in handcuffs. Additionally, plaintiff maintained the handcuff restraints caused nerve damage to his hand. Plaintiff also maintained he was intimidated by defendant’s personnel who supposedly threatened to kill him or break his neck.

{¶2} Plaintiff filed this complaint contending DYS should bear liability for the injuries he suffered on December 8, 2005. Plaintiff submitted photographs depicting injuries to his face, wrists, and arms. The photographs show a minor abrasion on plaintiff's face above his left eye, plus bruising on his arms and wrists. Plaintiff seeks \$2,500.00 in damages for the injuries. Plaintiff was not required to pay the filing fee.

{¶3} Defendant argued plaintiff's injuries were minor in nature and self-inflicted. Defendant acknowledged ORVJCF staff entered plaintiff's room on December 8, 2005, and physically restrained him. Defendant explained plaintiff was observed in his room "causing physical harm to himself" and ORVJCF personnel intervened to curtail plaintiff from continuing any additional acts of "self-injurious behavior." Defendant maintained plaintiff continued to cause injury to himself as ORVJCF staff tried to restrain him. Defendant related plaintiff's injuries "were a cut to the left outer brow, reddened areas to the wrists, and two superficially abraded areas to the left wrist." Defendant pointed out plaintiff's cuts were treated "by facility medical staff at the time in question." Defendant specifically denied plaintiff was injured by ORVJCF staff personnel acting in the course and scope of their employment. Defendant denied any ORVJCF staff member was negligent in regard to any incident involving plaintiff on December 8, 2005.

{¶4} Defendant conducted an investigation of the December 8, 2005, incident and collected written statements from the parties involved. The investigator found ORVJCF personnel restrained plaintiff in handcuffs after it was discovered he repeatedly tried to injure himself by banging his head against the wall of his room. According to the investigation findings, plaintiff was resistant to being handcuffed and attempted to injure himself by banging his head against the floor of his room. Additionally, the investigatory findings implied plaintiff injured his arms and wrists by continuing to struggle after being handcuffed. Defendant's investigation included written statements from the participants involved with restraining plaintiff including: JCO Markins, JCO Gallion, JCO Robinson, JCO Patterson, JCO McQuithy, JCO Sommer, and JCO Wynn. Plaintiff declined to offer a written statement in furtherance of the

investigation.

{15} JCO David Markins, who initiated the contact with plaintiff on December 8, 2005, related he observed plaintiff in an angry agitated state due to the fact his room had been searched. Markins noted that during the course of his duties which included placing a wrist band on plaintiff, plaintiff became verbally abusive prompting his placement “in seclusion” in his room. After filling out paperwork regarding the seclusion status, Markins stated he returned to plaintiff’s room and observed plaintiff “banging the back of his head off the wall.” Upon noticing plaintiff’s behavior, Markins related he informed fellow employees JCO Gallion and JCO Patterson of plaintiff’s action. Markins recalled he asked plaintiff to “calm down” ceasing his self-injurious acts, when plaintiff refused this request, Markin recorded he “radio[ed] operations” informing them of his intent to enter plaintiff’s room and asking for immediate assistance to deal with plaintiff. According to Markins, when he entered plaintiff’s room he again advised plaintiff to calm down and when plaintiff refused, he initiated a physical restrain maneuver. Markins wrote, “I then attempted to place (plaintiff’s) left arm in a C-Grip and turn him towards the wall.” Furthermore, according to Markins, at the same time, JCO Gallion, who had apparently arrived at plaintiffs’ room, attempted to restrain plaintiff’s right arm in a C-Grip. Markins asserted, plaintiff then became very combative resistant, swinging his fists. In response to these acts, Markins reported, he, JCO Gallion, and JCO Patterson, who had arrived at the scene, all struggled with plaintiff to the floor of the room. Markins wrote, plaintiff continued to struggle on the floor refusing to be subdued during the course of this struggle hit “his head face first on the floor causing a cut and blood started comming [sic] from his head.” While on the room floor plaintiff was handcuffed and helped to his feet. Markins implied plaintiff remained combative, although restrained and was advised “to not spit blood on anyone.” Markins related plaintiff responded by shouting expletives and threats of physical violence. Markins noted he in turn responded by shouting expletives and threats of physical violence. Markins noted he in turn responded to plaintiff’s verbal threats by placing plaintiff down to the room floor

holding his head away, “to protect myself from getting spit on.” Markins stated, “I then noticed I already had blood all over my hands.” Shortly after observing the blood Markins pointed out he was relieved by another JCO and plaintiff was subsequently escorted to a confinement rubber room.

{¶6} Defendant submitted a statement from JCO Robert Gallion, who wrote he was present at ORVJCF on the day of the incident forming the basis of this claim, when he heard JCO Markins tell plaintiff to, “calm down two or three times.” Shortly after hearing this, Gallion related he received a radio message from Markins advising, “[plaintiff] was banging his [head] off the wall.” Gallion recalled he responded to Markins’s radio message arriving at plaintiff’s room to hear Markins again advise plaintiff to calm himself and then see Markins attempt to restrain plaintiff with a C-Grip hold. Gallion asserted plaintiff became more combative and resistant, “swinging arms and legs.” Upon observing these acts, Gallion decided to assist in restraining plaintiff by using a, “rear finger flex.” When Gallion became physically involved in the restraint attempts, he, Markins, and plaintiff eventually fell to the room floor, where Gallion tried to apply handcuffs on plaintiff, who continued to resist. Gallion stated another JCO, identified as Wynn, had arrived at the scene during the struggle and successfully subdued plaintiff allowing handcuffs to be applied. Gallion observed the restrained plaintiff continued to shout expletives as he was being escorted to “McGuffey,” the confinement rubber room.

{¶7} A statement from JCO Robert Patterson was contained in the claim file. Patterson pointed out he was present at plaintiff’s housing unit on December 8, 2005, and observed JCO Markins standing outside of plaintiff’s room. Patterson related he heard Markins make remarks about plaintiff hurting himself by hitting his head against the room wall. Patterson recalled upon hearing Markins remarks he radioed for assistance to the scene. Additionally, Patterson offered that he also heard Markins radio for assistance. Patterson stated he then approached plaintiff’s room and heard Markins tell plaintiff to “calm down.” Patterson further stated that he saw both Markins

and JCO Gallion inside plaintiff's room attempting to physically subdue plaintiff's hands "in a rear finger flex," however the attempt was unsuccessful due to plaintiff's resistance in swinging his arms and bodily pulling himself away from Markins and Gallion. Patterson then recorded he saw plaintiff, Markins, and Gallion struggle to the floor of the room. According to Patterson, he then intervened and secured plaintiff's legs, but he still continued to thrash his arms about and bash his head against the floor. Patterson noted he saw blood on plaintiff's face as he continued to resist and hit his head on the floor. When additional assistance arrived plaintiff was finally handcuffed, helped to his feet, and escorted away. Patterson maintained plaintiff made verbal threats against ORVJCF employees during the entire time he observed the incident.

{¶18} Defendant filed a statement from JCO Daryl Wynn, who responded to the assistance call and helped restrain plaintiff. Wynn noted that when he arrived at plaintiff's room he saw plaintiff writhing about, hitting his head on the floor. Furthermore, Wynn noted he observed plaintiff kicking ORVJCF personnel who were attempting to restrain him. Wynn noted he held plaintiff's right leg while JCO Gallion tried to handcuff plaintiff. Wynn related plaintiff continued to resist being handcuffed by, "kicking and swinging his right hand towards staff." Wynn further related he, "placed (plaintiff's) right hand in a rear finger flex until cuffs could be applied." Wynn recalled plaintiff, "continued to be active resistant attempting to spit blood on staff," after being handcuffed. When plaintiff finally calmed himself he was escorted from his room.

{¶19} Defendant submitted statements from JCO Carl Robinson and JCO Scott Sommers, who responded to the assistance call, went to plaintiff's room, and witnessed plaintiff's behavior. Sommers stated when he arrived at plaintiff's room he heard him yelling and saw him on the floor, "kicking his legs and trying to fight with staff." Sommers also related he, "noticed there was blood on the floor and (plaintiff)." Robinson observed plaintiff banging his head on the floor and trying to kick staff. Additionally, Robinson recalled he heard plaintiff make verbal threats toward staff and witnessed plaintiff continue to be combative after being handcuffed.

{¶10} Defendant filed a statement from JCO John McQuithy, who escorted plaintiff from his room to the described Unit McGuffey safe room. McQuithy stated plaintiff, while being escorted, “began banging his head off the walls trying to hurt himself.” Reacting to this behavior, McQuithy related he then placed plaintiff in a rear finger flex hold until he became compliant.

{¶11} Defendant submitted a statement from Operations Manager, Ronald Bickers, who witnessed the events that took place in plaintiff’s room and participated in escorting plaintiff to the Unit McGuffey rubber room. Bickers stated he responded to a call for assistance and witnessed several ORVJCF staff struggling on the room floor with a handcuffed plaintiff. Bickers noted plaintiff was helped to his feet after he ceased struggling. According to Bickers, while plaintiff was being escorted from his room to Unit McGuffey, “he had to be stopped twice to calm down.” Bickers recalled that after plaintiff was placed in the Unit McGuffey rubber room he again became disruptive and hit his head on the wall. To stop this behavior, Bickers pointed out he applied a rear finger flex to plaintiff’s right arm. Bickers related plaintiff then, “hit his head again” and a brief struggle on the room floor ensued, which was stopped when plaintiff calmed. Bickers asserted that once plaintiff had calmed the handcuffs were removed and he was then examined by ORVJCF medical staff.

{¶12} All ORVJCF personnel involved in the December 8, 2005 incident with plaintiff denied striking him in any manner. All personnel involved in restraining plaintiff surmised plaintiff’s head injury was self-inflicted. Plaintiff’s head injury was assessed as a “3/8” long slightly gaping laceration with no significant depth noted to left outer brow.” Plaintiff’s claimed wrist injuries were also examined and assessed by ORVJCF nurse Angela Ware, R.N., who noted plaintiff had “[t]wo superficially abraded areas” on his left wrist as well as “reddened areas (cuff marks)” on both wrists. The injuries were treated and plaintiff was released from medical care. Defendant maintained the injuries plaintiff suffered were minor in nature and consistent in nature with being self-inflicted. Defendant’s internal investigation found the response to plaintiff’s behavior by ORVJCF

personnel was “appropriate under the circumstances.”

{¶13} Although plaintiff claimed his injuries were the direct result of being assaulted by plaintiff’s employees, no evidence other than the allegations contained in the complaint was offered to support this contention. Plaintiff refused to make any statement regarding his perspective on the events of December 8, 2005 at the time defendant conducted an investigation of the matter.

{¶14} R.C. 5139.01(A)(3) states “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 particular youths over which defendant maintains legal custody. *Shover v. Ohio Dept. of Youth Serv.* (Sept. 14, 1994), Ct. of Cl. No. 93-04176. Plaintiff, in the instant claim, has alleged multiple ORVJCF employees assaulted him resulting in a cut to his eyebrow area. Additionally, plaintiff claimed the minor injuries to his wrists were caused by being negligently restrained in handcuffs by ORVJCF personnel. Based on these alleged intentional and negligent acts of defendant’s employees, plaintiff has contended defendant should bear liability. Plaintiff seemingly alleges in his complaint that DYS is liable under a theory of negligence. To prevail in such a claim, the complaining party must prove, by a preponderance of the evidence, that the defendant breached a duty owed to him and that he sustained an injury caused by the breach. See *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St. 3d 79, 2003-Ohio-2573, 788 N.E. 2d 1088. In respect to adult offenders under the custody of the state, Ohio law imposes a duty of reasonable care upon the custodial agent to provide for its prisoners’ health, care, and well-being. *Clements v. Heston* (1985), 20 Ohio App. 3d 132, 136, 20 O.B.R. 166, 485 N.E. 2d 287. This court when addressing the duty owed by DYS to youths under its custody concludes the standard of care should at the minimum be equivalent to the standard expressed for adults in custody.

{¶15} Generally, for an employer such as DYS to be liable for employees’ tortious acts, the acts must be committed and, if intentional in nature, the acts must be

calculated to facilitate or promote the employer's business or interests. *Wynn v. Ohio Dept. of Job & Family Servs.*, Franklin App. No. 04AP-163, 2005-Ohio-460; *Browning v. Ohio State Hwy. Patrol*, 151 Ohio App. 3d 798, 2003-Ohio-1108, 786 N.E. 2d 94; *DiPietro v. Lighthouse Ministries*, 159 Ohio App. 3d 766, 2005-Ohio-639, 825 N.E. 2d 630. In the present claim, submitted evidence has shown the acts committed by ORVJCF employees in handling plaintiff were performed in the course of scope of employment. No presented evidence indicates anything but the fact that ORVJCF staff acted to facilitate and promote the business of operating defendant's facility. 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, 227 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 greater weight of the evidence from the statements of defendant's staff does not support a finding that excessive force constituting negligence was used against plaintiff or that the force used even caused the minor injuries plaintiff received. All injuries shown were consistent with being self-inflicted in nature. The court does not find plaintiff's allegations regarding his description of the events of December 8, 2005, to be particularly persuasive. Under the circumstances presented the court concludes all force used by ORVJCF staff was reasonable and necessary and consequently nonactionable. See *Taylor v. Cuyahoga Hills Juvenile Corrections Facility* (June 22, 2004), Ct. of Cl. No. 2002-10283.

{¶16} Plaintiff also argued he suffered injuries to his wrists due to the negligent application of handcuffs by defendant's employees. Evidence has shown plaintiff was handcuffed at approximately 11:20 a.m. on December 8, 2005. ORVJCF Operations Manager Ronald Vickers stated he removed the handcuffs from plaintiff once he had calmed down in the Unit McGuffey rubber room. Plaintiff was then assessed and examined by ORVJCF nurse, Angela Ware. Ware reported the time of her assessment and examination was 11:25. This evidence points to the fact plaintiff was restrained in

handcuffs for a matter of minutes. Under the circumstances offered, insufficient evidence has been produced to show defendant breached a duty of care owed to plaintiff or that the alleged breach caused the injuries to his wrists. *Harwell v. Grafton Correctional Institution*, Franklin App. No. 04AP-1020, 2005-Ohio-1544. The evidence available tends to show the minor abraded areas on plaintiff's wrists were self-inflicted in nature and not the cause of handcuffs restraints being too tightly applied or left on for an excessive amount of time. Plaintiff has failed to prove defendant breached any duty of care that caused him injury. Consequently, this claim is denied.



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MEMORANDUM DECISION

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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

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RDK/laa

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