IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
MEMPHIS DIVISION

TIMOTHY AARON BAXTER,	)	
	)	
Plaintiff,	)	
v.	)	**No. 2:10-CV-02667-STA-tmp**
	)	
OFFICER ARTHUR MALLORY,	)	
SERGEANT JOHN MOFFATT, and	)	
OFFICER ROBERT MOFFATT,	)	
	)	
Defendants.	)	

PRETRIAL ORDER

JURISDICTION

This court has jurisdiction over this action pursuant to 42 U.S.C. § 1983. Jurisdiction is not disputed.

SUMMARY OF THE CASE

Plaintiff alleges a violation of his Eighth Amendment rights under 42 USC § 1983 against the defendants Officer Arthur Mallory, Sgt. John Moffatt, and Officer Robert Moffatt. More specifically, Plaintiff alleges that defendants subjected him to excessive force on September 11, 2009, causing him injury.

Defendants deny that they violated the Plaintiff's constitutional rights or have any liability to him. Any force used against the Plaintiff on the date in question was necessary to restore the internal order and security of the institution, and any injury suffered by the Plaintiff was *de minimis* at best.

PLAINTIFF'S CONTENTIONS

On September 11, 2009, Plaintiff was an inmate at the West Tennessee State Penitentiary. Plaintiff was a worker in the produce fields and was driven in a pick-up truck with other inmates to work in the fields. Defendant Mallory was a correctional officer at the facility and was driving the truck on the day of the incident. Plaintiff complained to Mallory about his driving and advised Mallory that he was driving too fast. Mallory responded by striking Plaintiff in the head with a radio. Mallory and Defendant Robert Moffatt, another correctional officer at the facility, beat Plaintiff to the ground. Moffatt proceeded to take an axe handle from his tractor and strike Plaintiff with it. Moffatt choked Plaintiff as he applied handcuffs. When Plaintiff was returned to the prison, Defendant John Moffatt, the brother of Defendant Robert Moffatt, also assaulted Plaintiff.

Plaintiff suffered serious injuries to his arm and shoulder as a result of the assault. Plaintiff is entitled to monetary damages in the amount of $5 million.

DEFENDANTS' CONTENTIONS

On September 11, 2009, Defendant Mallory drove a group of inmates, including the Plaintiff, to the produce fields, where the inmates were assigned to work. Plaintiff had become increasingly hostile during his short time working in the fields, and on the date of the incident, began shouting and threatening Defendant Mallory as soon as the truck stopped at the work site. Defendant Mallory attempted to diffuse the situation by simply telling the Plaintiff to get to work. However, the Plaintiff refused to do so.

Defendant Robert Moffatt, who was out in the fields supervising another group of working inmates, overheard the shouting and came over to assist Defendant Mallory. Defendant Robert Moffatt asked the Plaintiff to follow him to the front of the truck so they could talk. Since the

officers are greatly outnumbered by the number of inmates working in the fields, Defendant Moffatt became worried that the Plaintiff could incite a riot, due to the nature of the Plaintiff's shouting paired with the proximity of the other inmates to the situation. As a result, Defendant Moffatt told Defendant Mallory to throw his truck keys into the field if it became necessary to prevent anyone from using it as an escape vehicle.

As the Plaintiff refused to cooperate with either Defendant Mallory or Defendant Robert Moffatt, Defendant Moffatt attempted to lead the Plaintiff to the front of the truck and away from the other inmates. However, when Defendant Moffatt reached for the Plaintiff, the Plaintiff swung at him. In an attempt to defend himself, Defendant Robert Moffatt picked up a tomato stick and swung it. Defendant Arthur Mallory called over his radio for back-up and then came over to assist Defendant Robert Moffatt in getting the Plaintiff under control. Back-up arrived soon thereafter, to escort the Plaintiff back to the prison.

Defendant John Moffatt, brother of Defendant Robert Moffatt, was working the sally port gate on the date of the incident. Shortly before the Plaintiff was brought through the gate, Defendant John Moffatt learned from another officer that his brother was one of the officers that had been attacked by the Plaintiff in the produce field. In an act of frustration, Defendant Moffatt took hold of the Plaintiff's shirt when the Plaintiff came through the sally port gate, admonishing the Plaintiff for attacking his brother. Another officer immediately led Defendant Moffatt away from the Plaintiff and thus ended the situation. Defendant John Moffatt never choked the Plaintiff or had any communication with him outside of that isolated incident.

Plaintiff was examined on the date of the incident, including an x-ray of his allegedly injured arm, at the health clinic at West Tennessee State Penitentiary. The x-ray revealed no damage to his arm, and

no injuries were noted, aside from some redness and a bump on his elbow. Plaintiff was also later examined by Dr. R. Michael Cobb at the West Tennessee Bone & Joint Clinic, who also found that there was no damage to Plaintiff's arm except some possible crepitus from a previous gunshot wound, and that no treatment was needed.

Following the incident, Plaintiff filed a grievance against the Defendants alleging they had used excessive force. Lt. Thomas Shell, from Internal Affairs at WTSP, investigated the incident. His investigation included interviewing the Plaintiff, each of the Defendants, and the officers and inmates who witnessed the incident. He also reviewed the Plaintiff's medical records, including the pictures taken of him by the medical staff at WTSP on the date of the incident. At the conclusion of his investigation, Lt. Shell found the Plaintiff was the aggressor on the date of the incident and there was no merit in the Plaintiff's claims of excessive force. As a result, he found no misconduct on the part of any of the Defendants and none of the Defendants were recommended for discipline.

Plaintiff has submitted no proof of any injury or damages sustained to support his allegation that he is entitled to compensatory damages in the amount of $5,000,000.00 (FIVE MILLION DOLLARS AND NO CENTS). Defendants contend that there was no injury, and Plaintiff is not entitled to any damages.

UNCONSTESTED ISSUES OF FACT

Defendants Arthur Mallory, Robert Moffatt, and John Moffatt were all employed by West Tennessee State Penitentiary on September 11, 2009. Plaintiff Timothy Baxter was an inmate on September 11, 2009, who had a job working in the fields at WTSP. Defendant Mallory, drove a group of inmates, including the Plaintiff, to the fields on the date in question to work in the fields.

At some point, Plaintiff was struck on the arm by Defendant Robert Moffatt. Defendant Sgt. John Moffatt was working at the Sally Port gate on the date in question. Plaintiff was examined by the medical staff at WTSP on the date in question, and later by Dr. R. Michael Cobb at West Tennessee Bone & Joint Clinic.

CONTESTED ISSUES OF FACT

(a) Defendants dispute Plaintiff Baxter was attacked by Defendant Mallory and Defendant Moffatt because he calmly told Defendant Mallory that he was driving the truck to the fields too fast.

(b) Defendants dispute Plaintiff Baxter was hit in the head with a radio by Defendant Mallory.

(c) Defendants dispute Defendant Mallory and Defendant Robert Moffatt violently beat Plaintiff to the ground.

(d) Defendants dispute Defendant Moffatt struck Plaintiff with an ax handle.

(e) Defendants dispute Plaintiff was choked by Defendant Sgt. John Moffatt.

(f) Defendants dispute Plaintiff has suffered injury that can be considered more than *de minimis*, if any at all, as a result of any incident that occurred on September 11, 2009.

(g) Defendants dispute Plaintiff is entitled to compensatory damages in the amount of $5,000,000.00 (FIVE MILLION DOLLARS AND NO CENTS).

CONTESTED ISSUES OF LAW

(1) Whether defendant Arthur Mallory subjected the Plaintiff to excessive force in violation

of his constitutional rights.

(2) Whether defendant Robert Moffatt subjected the Plaintiff to excessive force in violation of his constitutional rights.

(3) Whether defendant John Moffatt subjected the Plaintiff to excessive force in violation of his constitutional rights.

(4) Whether any alleged injury suffered by the Plaintiff is constitutionally significant.

(5) If so, the amount Plaintiff should be awarded.

PLAINTIFF'S EXHIBIT LIST

I. Exhibits Plaintiff Intends to Use (Uncontested)

(1) Plaintiff's chronological order of events;

(2) Map of aerial shot of West Tennessee State Penitentiary;

(3) Map of the location depicting the garden area where the assaults by Mallory and R. Moffatt occurred;

(4) Three (3) Tennessee Department of Corrections Disciplinary Infractions Reports for assault on staff from R. Moffatt and A. Mallory;

(5) Grievance filed by Plaintiff on September 18, 2009;

(6) Money receipt from Attorney Dr. Bede Anyanwu for services he provided to Plaintiff representing him at disciplinary hearings;

(7) Tennessee Department of Corrections Disciplinary Log finding Plaintiff not guilty of assault on staff;

(8) Tennessee Department of Corrections Internal Investigation Reports containing the

original format electronic copy consisting of colored photographs taken of Plaintiff on September 22, 2009;

(9) Tennessee Department of Corrections Internal Investigation Report containing a Recorded Interview with Defendants and eyewitnesses Lt. Galloway and Officer Mawby by Internal Affairs Investigator Thomas Shell on September 22, 2009;

(10) Tennessee Department of Corrections Internal Investigation Report containing a recorded interview with Plaintiff on September 22, 2009 by Internal Affairs Investigator Thomas Shell;

(11) Tennessee Department of Corrections Internal Investigation Report prepared by Internal Affairs Investigator Thomas Shell and containing a recorded sally port video depicting aggravated assaults by J. Moffatt and Officer Mawby;

(12) Affidavit of Tennessee Department of Corrections Internal Investigator Thomas Shell concerning his investigation of Defendants;

(13) Accident/Incident/Traumatic Injury Report prepared by Lakeisha Wilkes on Plaintiff's injuries in the hallway entering Unit 2B HAS punitive segregation area;

(14) X-ray film and consultation report for Plaintiff's elbow in Site 2 infirmary area September 2009;

(15) X-ray film and consultation report for Plaintiff's elbow and shoulder at NWCX Site 2 infirmary area August 2012;

(16) Plaintiff's medical records following his release from punitive segregation;

(17) Plaintiff's medical records after Plaintiff was transferred from WTSP to Charles Bass annex in Nashville;

(18) Plaintiff's complete medical records and reports from the West Tennessee Bone & Joint Clinic;

(19) Plaintiff's medical reports from Dr. Cobb at the West Tennessee Bone & Joint Clinic on May 3, 2010;

(20) X-ray film and consultation report for Plaintiff's elbow at the West Tennessee Bone & Joint Clinic on May 3, 2010;

(21) Plaintiff's medical records from Dr. John Hochberg, treating physician with Corizon Medical Services;

(22) Demonstrative exhibits regarding damages;

(23) *Fye v. John Moffatt*, 191 F.3d 452, 1999 WL 775921 (6th Cir. Sept. 24, 1999).

II. Exhibits Plaintiff May Use (Uncontested)

(1) Defendants' Answer to Complaint;

(2) Defendants' discovery responses;

(3) Defendants' interrogatory responses;

(4) Affidavit of Arthur Mallory;

(5) Affidavit of Robert Moffatt;

(6) Affidavit of John Moffatt;

(7) Affidavit of Thomas Shell;

(8) Plaintiff's deposition testimony;

(9) Letter from Dorothy Murley, Health Administrator;

(10) Defendants' Responses to Requests for Admissions;

(11) Any documents identified by Defendants; and

(12) Any exhibits necessary for rebuttal.

III. Exhibits Plaintiff Intends to Use (Contested)

(1) Two visual diagrams depicting the scene of where A. Mallory and R. Moffatt's assaults on Plaintiff occurred;

(2) Affidavit of Calvin Darnell;

(3) Affidavit of Christopher Roland;

(4) Curriculum vitae of Dr. John Hochberg;

(5) Written Expert Opinion of Dr. John Hochberg;

(6) Three (3) foot hickory axe handle;

(7) Four (4) foot tomato stake;

(8) set of handcuffs;

(9) Professional contract offers to Plaintiff from Tate Music Group;

(10) Video of Plaintiff's skill set as a professional drummer and musician before the assaults;

(11) Liability insurance agreement between Defendants and the Tennessee Department of Corrections.

IV. Exhibits Plaintiff May Use (Contested)

(1) I-Team Channel 4 News report featuring Tennessee Legislature Representative John Stevens and information on the Tennessee Department of Corrections destroying records related to assaults on staff;

(2) Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition;

(3) Posttraumatic Stress Disorder in Litigation: Guidelines for Forensic Assessment.

DEFENDANTS' EXHIBIT LIST

(1) Plaintiff's relevant medical records from West Tennessee State Penitentiary;

(2) Plaintiff's medical records from West Tennessee Bone & Joint Clinic;

(3) Plaintiff's interview with Lt. Thomas Shell from September 22, 2009;

(4) Memo from Lt. Thomas Shell to Warden Henry Steward regarding findings from WTSP Internal Affairs investigation;

(5) Video from Sally Port on September 11, 2009;

(6) Photographs of the Sally Port;

(7) Any exhibits listed by the Plaintiff.

PLAINTIFF'S WITNESS LIST

(1) Plaintiff Timothy Aaron Baxter;

(2) Calvin Darnell;

(3) Dr. Bede Anyanwu, Esq.;

(4) Christopher Roland;

(5) Lt. Kevin Gunn;

(6) Dr. John Hochberg;

(7) Ben Lindamood;

(8) Joe Lee Williams;

(9) Officer J. Pressley;

(10) David M. Carter;

(11) Any witnesses listed by Defendants.

DEFENDANTS' WITNESS LIST

(1) Defendant Officer Arthur Mallory;

(2) Defendant Sgt. John Moffatt;

(3) Defendant Officer Robert Moffatt;

(4) Lt. Thomas Shell;

(5) LaKeisha Davis, L.P.N.;

(6) Allison Butler, Custodian of the Records for West Tennessee Bone & Joint Clinic;

(7) CO Paul D. Jourden;

(8) Lt. Pat Galloway;

(9) Cpl. Daniel Mawby;

(10) Jerry Walford;

(11) Lucy Simpson;

(12) Margie Hayes;

(13) Shauna Jennings;

(14) James C. Guin;

(15) Any witnesses listed by the Plaintiff.

DEPOSITION TESTIMONY

The parties anticipate entering deposition testimony into evidence at the trial.

ESTIMATED LENGTH OF TRIAL

It is estimated that this trial will last 1-2 days.

JURY TRIAL

This case will be tried by a jury.

ASCERTAINABLE DAMAGES

The Plaintiff has not submitted any proof of any ascertainable damages in this case, and the

Defendants contend that there are none.

INTERESTED ATTORNEYS

Jennifer Brenner, Senior Counsel, Tennessee Office of the Attorney General & Reporter, Civil Rights & Claims Division;

Rebecca Lyford, Assistant Attorney General, Tennessee Office of the Attorney General & Reporter, Civil Rights & Claims Division.

SPECIAL EQUIPMENT TO BE USED DURING TRIAL

The Plaintiff intends to use an overhead projector, an easel, an evidence camera, and video equipment.

The Defendants intend to bring a laptop to play audio recordings and a video.

IT IS SO ORDERED.

s/ S. Thomas Anderson
S. THOMAS ANDERSON
UNITED STATES DISTRICT JUDGE

Date: June 19, 2015