



EXCESSIVE FORCE IN CORRECTIONAL FACILITIES

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On December 21, 2016, the Eighth Circuit Court of Appeals of decided *Ward v. Smith et al.*ⁱ, which is instructive concerning law pertaining to excessive force on convicted inmates of correctional facilities under the Eighth Amendment. The relevant facts of *Ward*, taken directly from the case, are as follows:

On October 26, 2009, Ward was an inmate of the Missouri Department of Corrections (MDOC) as a convicted person serving a sentence of imprisonment and was housed in the Administrative Segregation Unit (Ad Seg) at the South Central Correctional Center (SCCC). Officers Smith and Merriett worked at the SCCC as correctional officers. On that date at approximately 9:20 p.m., Officer Merriett ordered Ward to stop talking to another inmate who was housed in a different cell in Ad Seg. Ward refused the order. Officer Smith approached Ward's cell and ordered Ward to submit to wrist restraints, which would require Ward to place his hands behind his back and through a food port for an officer to apply handcuffs, in order for correctional staff to search Ward's cell. Ward refused the order to submit to wrist restraints.

Officer Smith contacted SCCC medical staff and confirmed that Ward had no medical condition that would prohibit the use of pepper spray to force Ward to comply with the order, and then Officer Smith received authorization from the shift supervisor to use force in the form of pepper spray. Officers Smith and Merriett and a third correctional officer approached Ward's cell, ordered him to submit to restraints, and when he refused administered a three-to-five second burst of pepper spray through the food port in Ward's cell. Approximately ten minutes later, Officer Smith again asked Ward to comply with the order to submit to wrist restraints, and this time Ward refused and placed his mattress in front of his food port. Officer Merriett moved the mattress aside using a barricade removal assistance device, and Officer Smith administered a second round of pepper spray into Ward's cell. During this second incident, Ward received a small cut on his arm.

Shortly thereafter, Ward complied with the request to submit to the wrist restraints. He was restrained, removed from his cell, and placed in a strip-out cell in the Ad Seg unit.

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The strip-out cell is approximately the size of a telephone booth. The officers removed the wrist restraints, strip searched Ward, removed his clothing from his possession, and provided him a security smock, which is a thin, padded blanket that can be placed over the body to cover the front and back but is open on the sides. Ward tied the smock around his lower body. A jail nurse treated the cut on Ward's arm by washing it with saline solution and placing a bandage over the cut. After officers had completed the search of Ward's cell and removed all personal items as punishment for Ward's failure to comply with an order, Officer Smith approached Ward in the strip-out cell and ordered him to again submit to wrist restraints so that he could be transported back to his cell. Ward responded by placing his hands over his face, and Officer Smith administered pepper spray directly toward Ward's face through the grated walls of the strip-out cell. Ward began coughing and claimed that he had asthma. The nurse returned and confirmed through an oximeter that Ward's oxygen levels were normal.

Officer Smith returned to the strip-out cell and ordered Ward to submit to the wrist restraints. Ward responded by covering his head and upper body with the security smock. Officer Smith placed the pepper spray canister at the food port of the strip-out cell and sprayed the pepper spray for a few seconds at a distance of less than three feet from Ward. Officer Smith claimed he was attempting to direct the spray underneath the security smock and towards Ward's face. At least some of the pepper spray made contact with Ward's bare genitals. After a few minutes, Ward agreed to be restrained, and he was then returned to his cell where he had access to running water but not soap.ⁱⁱ

Ward filed suit in federal district court and alleged, among other things, that the officers violated the Eighth Amendment by subjecting him to cruel and unusual punishment when they pepper sprayed him. After a bench trial, the district court judge found in favor of the officers and held that the officers did not violate the Eighth Amendment. Ward appealed the verdict to the Eighth Circuit Court of Appeals.

On appeal, Ward alleged that the trial court committed error in its verdict. The court of appeals first noted the standard by which they must review this case since it involved a bench trial. The court noted that, because the district court's decision was reached after a bench trial, the court must review legal questions de novo and factual determinations for "clear error." "Clear error" occurs when the court's findings are

[N]ot supported by substantial evidence in the record, if the finding[s are] based on an erroneous view of the law, or if we are left with the definite and firm conviction that an error has been made.ⁱⁱⁱ

Next, the court of appeals examined the law regarding Eighth Amendment violations and use of force in correctional facilities. The court, in describing the Eighth Amendment legal standard for cruel and unusual punishment, stated

After incarceration, only the unnecessary and wanton infliction of pain . . . constitutes cruel and unusual punishment forbidden by the Eighth Amendment." Whitley v. Albers, 475 U.S. 312, 319 (1986) (alteration in original) (quotation omitted). "The infliction of pain in the course of a prison security measure, therefore, does not amount to cruel and unusual punishment simply because it may appear in

retrospect that the degree of force authorized or applied for security purposes was unreasonable, and hence unnecessary in the strict sense." Id. Instead, when a court determines whether a correctional officer's use of force was excessive and in violation of the Eighth Amendment, the court must determine "whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." Hudson v. McMillian, 503 U.S. 1, 6-7 (1992). "Because the use of force is sometimes required in prison settings, guards are liable only if they are completely unjustified in using force, i.e., they are using it maliciously and sadistically." Irving v. Dormire, 519 F.3d 441, 446 (8th Cir. 2008). "^{iv}

In other words, in order to violate the Eighth Amendment, the officers must have used force "maliciously and sadistically to cause harm" rather than in a "good faith effort to maintain or restore discipline." Further the court described factors that they must consider in determining whether the force was reasonable. The court stated

Factors to be considered in deciding whether a particular use of force was reasonable are **whether there was an objective need for force, the relationship between any such need and the amount of force used, the threat reasonably perceived by the correctional officers, any efforts by the officers to temper the severity of their forceful response, and the extent of the inmate's injury.**" Treats v. Morgan, 308 F.3d 868, 872 (8th Cir. 2002) (citing Hudson, 503 U.S. at 7.^v

Ward argued that the district court erred in (1) determining that the officers did not intentionally spray his genitals with pepper spray, and (2) determining that the officers did not spray Ward to punish him for talking to another inmate. Both of these allegations, would likely equate to a "malicious and sadistic" use of force, if true.

Regarding Ward's first enumeration of error, the court of appeals stated that a review of the video shows an officer sprayed pepper spray under Ward's smock. The officer testified that while he sprayed it under the smock and some spray may have gotten on Ward's genitals, his intent was to get the pepper spray under the smock into Ward's face in order to cause him to comply with their orders to submit to hand restraints. The court of appeals noted that this would be an issue of weighing credibility which falls under the trial court; further, they held there was no evidence that court committed clear error in crediting the officer's testimony.

As to Ward's second enumeration of error, the court of appeals noted that the district court found that the officers used pepper spray "only after Ward refused the direct orders to submit to wrist restraints and the use of force was necessary to gain Ward's compliance and maintain the safety and security of SCCC."^{vi} Ward alleged he was actually sprayed as punishment for refusing to stop talking to another inmate. The court of appeals observed that Ward did in fact refuse to submit to restraints as ordered by the officers. Further, the video evidence showed that after being sprayed, when Ward finally submitted to the restraints, the officers ceased using force and did not spray him again. Thus, the court did not commit clear error in its ruling based on the evidence.

As such, the court of appeals held that the district court did not commit clear error in its finding and they affirmed the decision of the district court.

ⁱ No. 15-2583 (8th Cir. Decided December 21, 2016)

ⁱⁱ Id. at 2-4

ⁱⁱⁱ Id. at 5

^{iv} Id. at 5-6

^v Id. at 6

^{vi} Id. at 7

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