

EFiled: Apr 16 2020 02:40PM EDT [SEAL]
Filing ID 65582521
Case Number 394, 2019

IN THE SUPREME COURT OF THE
STATE OF DELAWARE

MATTHEW ANDERSON,	§	No. 394, 2019
Plaintiff Below,	§	
Appellant,	§	
v.	§	Court Below –
LIEUTENANT JOHN	§	Superior Court
BONNEWELL, individually,	§	of the State of
SERGEANT BRUCE TAYLOR,	§	Delaware
individually, and CORREC-	§	C.A. No.
TIONAL OFFICER EDGAR	§	N17C-02-080
VERDE, individually,	§	
Defendants Below,	§	
Appellees.	§	

Submitted: April 1, 2020

Decided: April 16, 2020

Before **SEITZ**, Chief Justice; **VALIHURA**, and
MONTGOMERY-REEVES, Justices.

ORDER

On this 16th day of April, 2020, the Court, having considered this matter on the briefs filed by the parties and the record below, has determined that the judgment of the Superior Court should be affirmed on the basis of and for the reasons assigned by the Superior Court in its August 19, 2019 telephonic ruling.

2a

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Tamika R. Montgomery-Reeves
Justice

[SEAL] EFiled: Aug 19 2019 11:58AM EDT
Transaction ID 64107917
Case No. N17C-02-080-FWW

EFiled: Jun 03 2019 04:19PM EDT [SEAL]
Transaction ID 63317838
Case No. N17C-02-080 FWW

**IN THE SUPERIOR COURT OF THE
STATE OF DELAWARE**

MATTHEW ANDERSON,)	
)	
Plaintiff,)	
)	
v.)	C.A. No.
)	N17C-02-080-FWW
LIEUTENANT JOHN)	
BONNEWELL, <i>et al.</i>)	
)	
Defendants.)	

ORDER

The Court having considered Defendant Correctional ~~Officer Edgar Verde's~~ [Lt. John Bonnewell's] Motion for Summary Judgment and any response thereto:

IT IS HEREBY ORDERED this day 19th of Au-
gust 2019 that the Motion for Summary Judgment is hereby GRANTED [for the reasons set forth at a teleconference this date]. Judgment is hereby entered in favor of Defendant Correctional ~~Officer Edgar Verde~~ [Lt. John Bonnewell] and against Plaintiff on all claims asserted in the Complaint. There being no just reason

4a

for delay, this Order shall constitute a final order pursuant to Superior Court Civil Rule 54(b).

/s/ Ferris W. Wharton

The Honorable Ferris W. Wharton

[FILE STAMP]

[SEAL] EFiled: Aug 19 2019 11:58AM EDT
Transaction ID 64107917
Case No. N17C-02-080-FWW

EFiled: Jun 03 2019 10:58AM EDT [SEAL]
Transaction ID 63314646
Case No. N17C-02-080 FWW

**IN THE SUPERIOR COURT OF THE
STATE OF DELAWARE**

MATTHEW ANDERSON,)	
)	
Plaintiff,)	
)	
v.)	C.A. No.
)	N17C-02-080-FWW
LIEUTENANT JOHN)	
BONNEWELL, <i>et al.</i>)	
)	
Defendants.)	

ORDER

The Court having considered Defendant Bruce Taylor’s Motion for Partial Summary Judgment on Plaintiff’s Claims against him and any response thereto:

IT IS HEREBY ORDERED this day 19th of Au-
gust, 2019 that the Motion is hereby GRANTED [for
the reasons set forth at a teleconference this date].

/s/ Ferris W. Wharton

The Honorable Ferris W. Wharton
[FILE STAMP]



[SEAL] EFiled: Aug 19 2019 11:58AM EDT
Transaction ID 64107917
Case No. N17C-02-080-FWW

EFiled: Jun 03 2019 05:02PM EDT [SEAL]
Transaction ID 63318177
Case No. N17C-02-080 FWW

**IN THE SUPERIOR COURT OF THE
STATE OF DELAWARE**

MATTHEW ANDERSON,)	
)	
Plaintiff,)	
)	
v.)	C.A. No.
)	N17C-02-080-FWW
LIEUTENANT JOHN)	
BONNEWELL, <i>et al.</i>)	
)	
Defendants.)	

ORDER

The Court having considered Defendant Correctional Officer Edgar Verde’s Motion for Summary Judgment and any response thereto:

IT IS HEREBY ORDERED this day 19th of Au-
gust, 2019 that the Motion for Summary Judgment is hereby GRANTED [for the reasons set forth at a teleconference this date]. Judgment is hereby entered in favor of Defendant Correctional Officer Edgar Verde and against Plaintiff on all claims asserted in the Complaint. There being no just reason for delay, this Order

7a

shall constitute a final order pursuant to Superior Court Civil Rule 54(b).

/s/ Ferris W. Wharton

The Honorable Ferris W. Wharton

[FILE STAMP]

EFiled: Oct 04 2019 10:43AM EDT
Transaction ID 64274430 [SEAL]
Case No. N17C-02-080 FWW

IN THE SUPERIOR COURT IN
THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY
CIVIL DIVISION

MATTHEW ANDERSON : No. N17C-02-080
vs. :
LIEUTENANT JOHN :
BONNEWELL, et al :

MOTION FOR SUMMARY JUDGMENT RULING –
TELECONFERENCE

BEFORE: THE HONORABLE FERRIS W. WHARTON

Friday, August 16, 2019
Commencing at 10:00 a.m.

Delaware Superior Court, Chambers
Wilmington, Delaware

KIMBERLY A. BURSNER, RPR
OFFICIAL COURT REPORTER
500 NORTH KING STREET, SUITE 2609
WILMINGTON, DELAWARE 19801
(302) 255-0572

[2] COUNSEL APPEARED AS FOLLOWS:

PAT GALLAGHER, ESQUIRE
for the Plaintiff

GEORGE LEES, ESQUIRE
for Defendant C.O. Edgar Verde

MARTIN O'CONNOR, ESQUIRE
for Defendant Lieutenant John Bonnewell

CARLA JAROSZ, ESQUIRE
for Defendant Sergeant Bruce Taylor

[3] MR. GALLAGHER: Pat Gallagher with Jacobs and Crumplar for plaintiff and I have our paralegal Regina Katz sitting here with me.

THE COURT: Who else is here? Good morning, Ms. Katz.

MS. KATZ: Good morning.

MR. O'CONNOR: Good morning, Your Honor. Martin O'Connor and Carla Jarosz with paralegal Jen waiting for the hearing or the decision to come through. And George Lees should be on the line somewhere.

MR. LEES: Good morning, Your Honor. George Lees, Department of Justice. I'm on the call as well. Thank you.

THE COURT: Good morning to all of you and I appreciate you all being available on short notice and especially you, Mr. Lees. I understand you are on vacation, so I won't – try not to take up any more of your time than is necessary.

So we will get right to it.

Before the Court are the defendants' [4] separate motions for summary judgment. The Court has considered the motions, the omnibus response of the plaintiff and oral argument which was held on August the 16th.

Trial is scheduled to begin on September the 3rd and because of the compressed nature of the motion practice and the short time until trial that is left to us, the Court felt that announcing its decision in this fashion rather than by written opinion or order would be appropriate.

The complaint alleges identical claims for relief against all three defendants. The plaintiff at the time of the incident giving rise to the complaint was a sentenced inmate at the Sussex V.O.O. Center.

Defendant John Bonnewell was a correctional lieutenant. Defendant Bruce Taylor a sergeant and defendant Edgar Verde a correctional officer.

The claims allege assault, battery, intentional infliction of emotional distress, a violation of the plaintiff's civil rights [5] under the eighth amendment to the United States Constitution as enforced by 42 U.S.C. 1983 and a violation of his comparable right under Article 1 of the Delaware Constitution and conspiracy to violate his right to be free from cruel and unusual punishment as enforced by 42 U.S.C. 1985 and civil conspiracy under state law.

All of the motions for summary judgment argue some of the same reasons in support of the motions,

qualified immunity, Delaware State Tort Claims Act immunity, that the assault and battery and intentional infliction of emotional distress and the Delaware civil rights claims and conspiracy failed because either the lack of evidentiary support in the record or are insufficient as a matter of law. And also the use of force was justified.

Court has the benefit of a video recording of the incident which the Court finds very helpful in resolving the motions. The video does have its limitations, however. [6] Chief among them are that there is no audio and the video only shows the altercation from a single angle. Nonetheless, the video clearly shows certain things occurred.

To the extent that anything the Court describes as facts shown by the video conflicts with the allegations of the plaintiff, the Court has determined that the video blatantly contradicts the plaintiff's version such that no reasonable jury could believe it.

The relevant portion of the video last approximately a minute and a half and shows the following:

One, a line of inmates on the left side of the video walking towards the camera which appears to be positioned at ceiling level looking down the hallway in which the inmates are walking.

The plaintiff appears to throw something into a room to his right and this action appears to be of no significance because none of the defendants claim to have [7] seen him do that.

Lieutenant Bonnewell appears walking to the right side of the hallway in the opposite direction of the line of inmates and on the opposite side of the hall.

The plaintiff makes a gesture with his left hand and arm in what appears to be an attempt to get Bonnewell's attention. The defendant's left arm is slightly raised and his thumb and forefinger are extended, but the motion does not appear to be done in an aggressive manner.

The plaintiff appears to say something to Bonnewell. Bonnewell stops and says something to the plaintiff who then turns his head to face forward towards the front of the line. Bonnewell is at this time several feet away from the plaintiff and on the opposite side of the hallway.

Bonnewell then continues on his way for about another six or seven paces or about 15 to 20 feet. The plaintiff turns and, again, appears to speak to Bonnewell as [8] Bonnewell is walking away. Bonnewell turns and walks back to the plaintiff quickly.

This time, unlike the first time when Bonnewell was on the opposite side of the hallway as the plaintiff, Bonnewell appears – approaches the defendant and stands directly in front of him with his face inches from the plaintiff's face.

At this point Sergeant Taylor comes into view from the same direction as Bonnewell had been walking behind Bonnewell's left side and stands shoulder to

shoulder with him as both men point past the plaintiff – point past the plaintiff with their hands.

Bonnewell with his right hand and Taylor with his left. Does not appear to be disputed that they're pointing to something called the footprints which is an area out of view of the camera where inmates are sometimes directed to stand.

Plaintiff takes a step or two back and starts to turn his body. His left hand is closed as it had been ever since Bonnewell [9] stopped to say something to the plaintiff the first time. Correctional Officer Verde then enters the video coming from the same direction and on the same side of the hall as the other two officers.

Verde enters approximately ten seconds after Bonnewell turns to reengage the plaintiff. Verde enters quickly, but not at a run and starts to tackle the plaintiff with Verde's left hand and arm reaching over plaintiff's left shoulder in the neck area. All three officers and the defendant go to the ground after about five seconds of struggle with the defendant initially going to his knees in what might be described as a fetal position.

A fourth correctional officer joins with the defendants and an active struggle ensues for about 20 to 25 seconds. Ultimately, the plaintiff is handcuffed on his feet and walked away after another 30 to 35 seconds or so.

The entire incident where any [10] physical force was used is just over a minute in duration. During the

struggle, Bonnewell appears to spray something, capstun, in the plaintiff's face, but at no time did the Court see any correctional officer kick or punch the plaintiff.

Physical force in the video shows the plaintiff being tackled with defendant Verde initiating that action and then a bit of a scrum until the plaintiff was handcuffed, the four officers and the plaintiff on the ground.

Superior Court Rule 56C provides that summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

The moving party initially bears the burden of establishing both of these elements. If there is such a showing, the burden shifts to the non-moving party to show that there are material issues of fact for resolution by the ultimate fact finder.

The Court considers the pleadings, [11] depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, in determining whether to grant summary judgment.

Summary judgment will be appropriate only when upon viewing all of the evidence in a light most favorable to the non-moving party, the Court finds that there is no genuine issue of material fact. When material facts are in dispute where it seems desirable to inquire more thoroughly into the facts to clarify the application of the law to the circumstances, summary judgment will not be appropriate.

However, when the facts permit a reasonable person to draw but one inference the question becomes one for decision as a matter of law.

The Court turns first to the defendants' claims of qualified immunity and immunity under the Delaware State Tort Claims Act which the defendant's assert with respect to the plaintiff's 1983 claims and the state [12] law claims respectively.

Claims 1983 and related 1985 claims are based on an allegation that his eighth amendment right to be free from cruel and unusual punishment was violated by the defendants' use of excessive force. That issue turns on whether the force was applied in good faith – in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.

Much argument has been devoted to what has been referred to as the Whitley factors set out in *Whitley V Albers*, 475 U.S. 312 and the Court has considered those factors in making its decision.

Court also focuses on different language in *Whitley* found that 321 and 322 which reads prison administrators should be accorded wide-ranging deference in the adoption and execution of policies and practices in that their judgment needed to preserve internal order and discipline and to [13] maintain institutional security. That deference extends to a prison security measure taken in response to an actual confrontation with riotous inmates just as it does to prophylactic or

preventative measures intended to reduce the incidents of these and any other breaches of prison discipline.

It does not insulate from review actions taken in bad faith for no legitimate purpose, but it requires that neither judge nor jury freely substitute their judgment of that of officials who have made a considered choice. Accordingly, in ruling on a motion for a directed verdict in such a case as this – and parenthetically, that’s referring to Whitley, and as in motions for summary judgment motions for directed verdict, view the evidence and the inferences in a light most favorable to the non-moving party.

Courts must determine whether the evidence goes beyond a mere dispute over the reasonableness of a particular use of force or the existence of arguably superior [14] alternatives.

Unless it appears that the evidence viewed in a light most favorable to the plaintiff will support a reliable inference of wantonness and the infliction of pain under the standard we have described, the case should not go to the jury.

Only if ordinary errors of judgment could make out an eighth amendment claim would this evidence in Albers create a jury question.

Qualified immunity attaches when the officers’ conduct does not violate clearly-established statutes or constitutional rights of which a reasonable person would have known.

Immunity protects all, but the plainly incompetent for those who knowingly violate the law. Qualified immunity is a question of law determined by the Court and necessarily the fact-specific enterprise.

In addition to the video, the Court has considered the report and deposition [15] testimony of plaintiff's expert, Martin Horn. Horn was asked to give an opinion as to whether the use of force was appropriate, justified or excessive. His opinion was that there was no need to take the plaintiff to the floor in the first instance and everything proceeded from that. I'm quoting from Horn's deposition at 178 and 179.

He believed that everything emanated from when Bonnewell got within an inch of the plaintiff's face and appeared to be speaking to him in a loud tone. Horn says he can't ignore that and says that Bonnewell is the professional. He's the one who is subject to the rules. He is the one with the obligation to de-escalate, not Anderson.

Finally, Horn opines that the actions of the officers were not in keeping with the generally-accepted standards of behavior for boot camp officers.

The Court views Mr. Horn's opinions and the inferences to be drawn from it in the light most favorable to the plaintiff. If [16] this were a standard of care case in a different context, it would clearly be enough to defeat summary judgment, but this is an eighth amendment cruel and unusual punishment case involving a malicious or sadistic standard. Not only does Mr. Horn offer no opinion on that score, the video

refutes it. It shows zero kicking, punching and other malicious and sadistic acts of violence, if that was the purpose to inflict injury. In reality, apart from Officer Verde's take down, which I'll address later, it shows nothing more than the force necessary to cuff an uncooperative inmate.

As to the particular defendants, Bonnewell gets into the plaintiff's face and joins in the take down once it is occurring and participates in the scrum including cap stunning the plaintiff. None of this amounts to malicious and sadistic behavior for the purpose of inflicting pain.

Taylor does even less and Horn recognizes that. Verde initiates the take [17] down, but while the use of that force might be questioned, that clearly falls within what Whitley says is a dispute of the reasonableness of the use of force or the existence of arguably superior alternatives.

The Court finds, one, that the use of force did not violate the eighth amendment. And, two, that the defendants are entitled to qualified immunity because there is no violation to a constitutional right.

Therefore, the motions for summary judgment as it relates to the 1983, 1985 claims which are four and five in the complaint are granted.

The Court next turns to the question of whether the Delaware State Tort Claims Act which was the claims against the defendants. Under the Delaware State Tort Claims Act state actors who are employees

who are sued in their individual capacities are exempt from liability when the alleged act or failure to act arises out of and in connection with the performance of official duties involving the [18] exercise of discretion, the act or failure to act was done or not done in good faith and I believe that the public interest would be served thereby. And, three, the act or failure to act was done without gross or wanton negligence.

A plaintiff can avoid the application of the Delaware State Tort Claims Act immunity and defeat that immunity if he can prove the absence of one of those three elements. Here the plaintiff argues that the defendants' actions were in bad faith and that they acted with gross or wanton negligence.

The Court does not view the standards for application of qualified immunity to the federal claims as the same as Delaware State Tort Claims Act immunity.

Qualified immunity deals with a violation of a constitutional right. Delaware State Tort Claims Act immunity deals with issues of gross negligence and good faith.

Bad faith is simply not bad judgment or negligence. It applies conscious doing of [19] a wrong because of dishonest purpose or moral obliquity.

Nothing the plaintiff offers as he steps in bad faith meets that test. Not the claim that the correctional officers hit each other after the fact or that Bonnewell and Taylor were punishing the plaintiff because he was showing off in front of other inmates. The

former does not speak to a consciousness of doing wrong because of dishonest purpose or moral obliquity. And the latter might serve as a legitimate basis for imposition of some sanction.

As to the question of gross or wanton negligence, the plaintiff basis his argument on the fact that the defendant engaged – defendants engaged in intentional acts which is a greater standard than gross or wanton negligence.

But the question is not whether the defendants acted intentionally as in doing what they did volitionally. Here the question is whether the perception of the need to do [20] those actions was taken – that the defendants took was grossly or wantonly negligent.

Gross negligence represents more than ordinary inadvertence or inattention. It's an extreme departure from the ordinary standard of care. The deviation from the duty of care can also be demonstrated by willful and wanton conduct.

Willfulness indicates an intent or a conscious decision to disregard the rights of others. Wanton conduct occurs when a person who not intending to cause harm does something so unreasonable and so dangerous that the person either knows or should know that harm will probably result.

In applying the gross or wanton negligence standard, the Court takes into account the reports of Martin Horn that they submitted in connection with the state's motion in limine, as well as those portions of

his deposition testimony that accompany the submissions in connection with these motions.

Like Mr. Horn, the Court places great [21] weight on the video.

First, as to Sergeant Taylor. Sergeant Taylor joined Lieutenant Bonnewell in directing the plaintiff to the footprints and only joined in the physical altercation after Correctional Officer Verde initiated it. He did nothing more than what was necessary to restrain the plaintiff to get the handcuffs on him. He did not kick or punch the plaintiff.

Mr. Horn notes that Sergeant Taylor was in a difficult position. He understood Sergeant Taylor's actions, although he would have preferred Sergeant Taylor to stop the ongoing scrum.

On these facts that is shown in the video, the Court finds no genuine issue of material fact as to whether Sergeant Taylor acted with gross or wanton negligence. He did not.

Turning to Lieutenant Bonnewell, Lieutenant Bonnewell did not initiate any physical confrontation. Mr. Horn does find fault with Lieutenant Bonnewell for his [22] aggressiveness in confronting the plaintiff after the plaintiff violated the rules about addressing officers at least twice.

Mr. Horn feels Lieutenant Bonnewell should have de-escalated the situation. It was only after Correctional Verde initiated the physical struggle, however Lieutenant Bonnewell put his hands on the plaintiff.

Everything he did on the video was done in an effort to subdue a struggling inmate including the use of cap stun. There is no reason to believe that had either the plaintiff complied more quickly with the correctional officers' instructions or had Verde not intervened, no cause of action would have arisen from this incident.

Again, the Court finds no genuine issue of material fact Lieutenant Bonnewell was grossly or wantonly negligent. He was not.

Finally, the Court turns to Correctional Officer Verde. Here the most disturbing allegation is that Correctional [23] Officer Verde applied a choke hold to the plaintiff. If supported by evidence in the video record, or at least not blatantly contradicted by the video, such an action might support a determination of gross or wanton negligence.

The Court has carefully reviewed the video for any evidence that Verde applied the choke hold.

I should add that the Court has reviewed the video on many occasions looking specifically for whether Correctional Officer Verde applied the choke hold. There is just simply no such evidence. What Verde does do is initiate a take down of the plaintiff by reaching over the plaintiff's left shoulder with his left arm, with Correctional Officer Verde's left forearm on the left side of the plaintiff's neck. The contact lasts no more than three or four seconds as Correctional Officer Verde and others attempt to take the plaintiff down.

To the extent Mr. Horn believed that [24] a choke hold was applied, the video blatantly refutes that contention.

Further, the Court finds that Correctional Officer Verde was, at most, negligent in his assessment of the situation occurring with Lieutenant Bonnewell and Sergeant Taylor and the need to use force that that situation created.

Plaintiff did have his left hand closed in the video and whether he was blading or retreating is debatable, but what – that debate merely raises an issue of negligence on Correctional Officer Verde’s part and not gross or wanton negligence.

Again, there is no genuine issue as to material fact as to gross or wanton negligence. There was not on Correctional Officer Verde’s part.

Because the plaintiff has failed to overcome the immunity afforded by the Delaware State Tort Claims Act as to all the defendants and because there was no eighth amendment violation, all of the defendants’ motions for [25] summary judgment are granted.

Thank you, everyone.

MR. GALLAGHER: Your Honor, Pat Gallagher. Point of clarification.

THE COURT: Yes.

MR. GALLAGHER: First, for the record, I want to note my objection to the Court’s ruling and,

second, who is the court reporter today, please? I'd like to get a transcript.

COURT REPORTER: Okay. I'll get you one. I'll send you an e-mail over.

MR. GALLAGHER: Okay.

THE COURT: There you go.

(At 10:27 a.m. proceedings were concluded.)

[26] CERTIFICATE

I, KIMBERLY A. BURSNER, RPR, Official Court Reporter of the Superior Court, State of Delaware, do hereby certify that the foregoing is an accurate transcript of the proceedings had, as reported by me, in the Superior Court of the State of Delaware, in and for New Castle County, in the case herein stated, as the same remains of record in the Office of the Prothonotary in Wilmington, Delaware, and that I am neither counsel nor kin to any party or participant in said action, nor interested in the outcome thereof.

WITNESS my hand this 4th day of October 2019.

Kimberly A. Bursner, RPR
Official Court Reporter

EFiled: May 05 2020 11:07AM EDT [SEAL]
Filing ID 65616710
Case Number 394,2019

IN THE SUPREME COURT OF THE
STATE OF DELAWARE

MATTHEW ANDERSON,	§	
Plaintiff Below,	§	No. 394, 2019
Appellant,	§	
	§	
v.	§	
LIEUTENANT JOHN	§	Court Below –
BONNEWELL, individually,	§	Superior Court
SERGEANT BRUCE TAYLOR,	§	of the State of
individually, and CORREC-	§	Delaware
TIONAL OFFICER EDGAR	§	C.A. No.
VERDE, individually,	§	N17C-02-080
	§	
Defendants Below,	§	
Appellees.	§	

Submitted: May 1, 2020
Decided: May 5, 2020

Before **SEITZ**, Chief Justice; **VALIHURA, VAUGHN,**
TRAYNOR, and **MONTGOMERY-REEVES,** Jus-
tices, constituting the Court *en Banc*.

ORDER

This 5th day of May, 2020, the Court has carefully considered the motion for rehearing *en Banc* filed by appellant and it appears that the motion for rehearing *en Banc* is without merit and should be denied.

26a

NOW, THEREFORE, IT IS ORDERED that the motion for rehearing *en Banc* is DENIED.

BY THE COURT:

/s/ Tamika R. Montgomery-Reeves
Justice
