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Lawsuit: Inmate alleges assault by correctional officer with loaded weapon

Also alleges violations of due process in disciplinary hearing

By Jordan Bailey | Oct 28, 2016



WARREN — A former inmate at Maine State Prison has filed a lawsuit against the Department of Corrections alleging assault by a correctional officer and violations of due process in his disciplinary hearing related to the incident. The case will be dismissed if defendants are not served summonses by Oct. 31 — yet the plaintiff indicates his efforts to serve them have been obstructed by authorities, and notices from the court are still being sent to the prison even after his release in July.

Former prisoner Edward Smith alleges in the civil case filed at Rockland Superior Court, that Correctional Officer Nathan Staples held a loaded shotgun to Smith's head in the process of restraining him.

Correctional officers who are members of the Special Operations Group, a high-risk security team at Maine State Prison, had been carrying Keltec KSG shotguns loaded with rubber bullets inside the prison until August 2016, when that policy was ended because it violated a standard of the American Corrections Association under which the prison is accredited, according to Gary LaPlante, director of operations for the Department of Corrections. They now carry Tasers. SOG officers have been present at the facility, training and assisting in patrolling since 2013, and a two-officer, daily security patrol began in November 2015.

According to Smith's affidavit obtained from Knox County Unified Court, on the afternoon of Sept. 14, 2015, correctional officers were conducting a search of the close unit's F pod. They strip-searched inmates, handcuffed them and had them sit in a row of chairs. Staples was guarding the seated inmates.

While sitting there, Smith wrote, he heard an inmate "screaming as if he was being assaulted," and turned to see what was happening. This set off an escalating verbal exchange between the officer and the inmate.

Smith wrote that Staples yelled "Turn the f--- around," and Smith said "whatever you say" under his breath. When Staples asked what he said, Smith repeated his comment more loudly. Staples allegedly said, "Get your a-- up;" Smith asked him to "say please."

Then, both parties report, the altercation got physical.

"Staples violently grabbed my right arm, yanked me out of my chair, then pushed me away from the chairs toward the nearby concrete wall," Smith's affidavit continues. "One of my knees gave out because I had been forced to leave my knee braces back in my cell.

"As I began to fall, Staples shoved me into the wall, then pushed me onto the floor... Several officers jumped on my back and Staples jam[med] a loaded shotgun style weapon against the base of the back of my skull. At no time did I resist."

Smith wrote that he suffered a large bruise to his right bicep and a large abrasion on his right hand, and in a letter to this paper, wrote that he has suffered recurring night terrors since the incident.

Staples' report of the incident was included in the case files and provides his version of the events. He does not mention a shotgun in his report.

Staples wrote he was overseeing inmates in the dayroom when Smith refused to face forward and yelled that he did not have to be quiet. Staples also wrote that when he told Smith to get up, Smith stated Staples had to say please.

"Inmate refused to get up so I used directional force to help him up out of the chair," the report continues. "After a few steps, inmate stopped walking and tried to pull away from me out of my grasp. I secured [him] against the wall and [he] continued to try and pull away from me. [He] was then taken to the

ground and secured there until he stopped resisting and followed staff orders. Inmate was then escorted to his feet and escorted to the close-C pod ... without further incident."

Smith was written up for refusing to obey orders and causing a disturbance.

The investigation report for the disciplinary violations does not shed any light on the incident. Correctional Officer Thomas Averill conducted the investigation on Sept. 17, 2015. His report reads, in full: "Prisoner's statement 'The next time I see that Faggot C.O. I am going to knock him the f--- out.' Inmate was placed on E.O.S. for the above statement."

Above the line for prisoner's signature was written, "unable to sign. 9-17-2015."

A Freedom of Access request by this paper for surveillance footage of the incident was denied for the reason that it was not public. When a second request was submitted citing a Cumberland County Superior Court case ruling video footage inside a correctional facility is public, the Department's response was that the footage does not exist.

When asked if this incident and two recent alleged misfires by SOG officers had anything to do with the decision to stop arming officers with shotguns, LaPlante said they did not and that he had no comment on Staples.

Warden questions officer's credibility

Staff at Maine State Prison said Staples is no longer employed there. A Freedom of Access request for disciplinary letters to Staples yielded one for an earlier incident. The letter dated July 30, 2015, outlined disciplinary measures — two weeks suspension without pay — for his lack of cooperation during an investigation into how another correctional officer came to be handcuffed.

"Your unwillingness to fully and honestly describe the events involving an employee being handcuffed is of serious concern," the letter from former Maine State Prison Warden Rodney Bouffard reads. "You claimed you participated in the handcuffing incident; but your claim that you know nothing else about the incident is not credible."

Bouffard's letter goes on to emphasize the importance of officers' honesty because "often times we must rely on the word of an officer instead of a prisoner," and states that "Any future incidents of behavior that compromises your credibility could result in disciplinary action up to and including dismissal."

Bouffard states in the letter that Staples would also be barred from participation in "special teams" for one year. However, if he was carrying a shotgun, as Smith alleges, that would mean he was participating in the Special Operations Group less than two months later.

Alleged violations of due process

Eight inmates signed a page stating they had witnessed the altercation between Smith and Staples and were “willing to testify on behalf of Eddie Smith.”

But Smith alleges, and the hearing summary in the case file confirms, that none of those witnesses was called, nor was video surveillance footage reviewed during his disciplinary hearing for the incident, held in the prison Oct. 14, 2015 with Capt. Harold Abbott Jr. presiding and inmate Richard Dwyer representing Smith as counsel substitute.

In the disciplinary hearing summary, the sections for names of witnesses called, testimony offered, exhibits presented and reasons for withholding testimony or exhibits were left blank.

Requests for interviews with the inmate witnesses were not approved by the commissioner by press time.

According to Department of Corrections prisoner discipline policy, "the permission to call or question a witness ... and to present or examine exhibits shall not be unreasonably withheld or restricted." When those rights are restricted, the reasons must be documented in the hearing summary. The policy also requires that the hearing officer "shall take all reasonable steps to ensure the [witness] testimony is presented at the hearing."

Maine statute on disciplinary action at correctional facilities states that the client is entitled to call one or more witnesses, "which right may not be unreasonably withheld or restricted."

The hearing summary indicates Smith was found guilty of both counts with “staff report” listed as the sole basis for the decision.

In his appeal of the decision, Smith alleged that Staples' incident report was false and that other staff had witnessed the assault. He alleged his requests for witnesses and video evidence were refused during the hearing. He also stated he suffers from mental illness, and that not having knee braces made him unstable on his feet.

Deputy Warden Troy Ross, who reviewed Smith's appeal, affirmed both the decision and recommended dispositions of Abbott, the disciplinary hearing officer, with no reason given.

The lawsuit, *Smith v. Department of Corrections*, filed Nov. 17, 2015, is a petition for review of that final agency action. The defendants listed in the petition are: Staples, Averill, Abbott, Ross, Dwyer, Maine State Prison Warden Randall Liberty, and Department of Corrections Commissioner Joseph Fitzpatrick.

The court found the lawsuit to be “not frivolous” and the applicant to be proceeding in good faith, and ordered in Nov. 24, 2015 that the filing fee be waived until Smith could pay it because during the prior six months his average monthly account balance was \$0. Smith was ordered to pay 20 percent of his

monthly income each time his account exceeds \$10, until the \$150 filing fee is paid in full. Smith agreed to this arrangement in an order to proceed dated Dec. 7, 2015.

In several letters sent to the court since then, Smith describes alleged obstructions to his attempts to serve the defendants with court documents. He wrote that summons forms were not included in a package he received from the court on Dec. 9, 2015; that the prison library clerk would not photocopy exhibits; and that two of the exhibits associated with his case were removed from a room where inmates' legal documents are supposed to be held securely. He also implied in a letter that he was being denied access to certified U.S. Mail services. He requested court clerks provide him with photocopies, and in another letter, requested that they serve the defendants.

Justice William Stokes granted Smith's request that the court clerks provide him with two summonses for no fee in an order dated Aug. 29, 2016. Stokes also ordered that the case be dismissed unless Smith files proof of service by Oct. 31, 2016. However, a clerk said Monday they were not aware that Smith had been released in July and that all correspondence to Smith has been sent to the prison.

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POSTED BY: PATRICIA KEYES | Oct 30, 2016 07:34

Don't get me started on the failures of the court and prison systems to produce information to the public under FOIA, simply so this newspaper can print an accurate story. I've seen them "lose" video evidence myself when it's convenient. Want to protect yourself? Get a cell phone with instant upload of video to the cloud, so they can't destroy video evidence on your phone if you are falsely accused of something. It makes me so angry to be suspicious of the justice system that is supposed to protect us.

POSTED BY: PATRICIA KEYES | Oct 30, 2016 07:30

Occasionally, a guard is hired enjoys torturing others. I'm glad to see he was removed. He's a stain on the honor of the rest of the men doing their thankless jobs well, day in and day out. Prison isn't supposed to be fun, but no prisoner should be attacked for being concerned about the health and safety of another