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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

\*\*\*\*\*  
 JASON DAVIS \*  
 Plaintiff \*  
 \*  
 vs. \* CIVIL ACTION  
 \* No. 96-11598-MEL  
 \*  
 PAUL RENNIE, et al \*  
 Defendants \*  
 \*  
 \*\*\*\*\*

BEFORE THE HONORABLE MORRIS E. LASKER  
 UNITED STATES DISTRICT JUDGE, and a jury  
 JURY TRIAL, DAY 2  
 September 29, 1998

APPEARANCES:

BRENDAN J. PERRY & ASSOCIATES, (By Christopher M. Perry, Esq., and Terance P. Perry, Esq.), 95 Elm Street, PO Box 6938, Holliston, Massachusetts 01746, on behalf of the plaintiff

OFFICE OF THE ATTORNEY GENERAL, (By John B. Bigelow, AGA, and Deborah I. Ecker, AGA), One Ashburton Place, Boston, Massachusetts 02108, on behalf of defendants Murphy, Elias and Zampini

OFFICE OF THE ATTORNEY GENERAL, (By Howard Meshnick, AGA, and Michelle N. O'Brien, AGA), One Ashburton Place, Boston, Massachusetts 02108, on behalf of defendants Gillis, Hanlon, Flowers, Fitzpatrick, Tassone and Joseph

DAVID RICCIARDONE, ESQ., 108 Grove Street, Suite 2, Worcester, Massachusetts 01609, for defendant Bragg

SHUGRUE & PENDERGAST, (By Gerald E. Shugrue, Esq.), 86 Church Street, Whitinsville, Massachusetts 01588, for defendant Weigers

1 The placard on the stand should be, Exhibit 118.

2 THE COURT: Sir, would you please come up to  
3 the witness box.

4 GREG PLESH, sworn

5 MR. C. PERRY: Your Honor, can I approach the  
6 witness?

7 THE COURT: Yes, but first give us your full  
8 name and spell it. Spell your last name for us, please.

9 THE WITNESS: My name is Greg Plesh. My last  
10 name is spelled P-L-E-S-H.

11 THE COURT: Thank you, sir.

12 DIRECT EXAMINATION

13 (BY MR. C. PERRY)

14 Q And can you state your date of birth, Greg?

15 A 8/23/61.

16 Q And can you tell us your age?

17 A Thirty-seven.

18 Q And your employment, present employment?

19 A Department of Mental Health, Department of Mental  
20 Health police officer.

21 Q And what is your title there, official title?

22 A Classification is campus police officer. The  
23 Department is called the Department of Mental Health  
24 Police. We're special State Police officers licensed  
25 through Massachusetts, department of the State Police.

13                   **THE COURT:** Training.

14       A    You're trained every day you're on the unit. There's  
15       on-the-job training, and there's those nonviolent restraint  
16       classes. So it's -- it's a learning process almost every  
17       day.

18       Q    In the training, did they teach you you cannot incite,  
19       provoke or antagonize a mentally ill patient at the  
20       hospital?

21       A    That would be part of the training. That's just good  
22       judgment.

23       Q    Did they teach you that you cannot brutalize or beat a  
24       patient at the hospital?

25       A    We're not allowed to use any type of violent force. If

1 somebody was to strike at you, you couldn't even block it  
2 with a straight arm block. That would be considered  
3 violent.

4 You would have to do something absorbing. They  
5 teach you techniques to absorb and deflect rather than  
6 confront and break.

7 Q And did they teach you that punching a patient in the  
8 face is against the policy of the Department?

9 A Oh, it's against the policy. There's a phrase we have,  
10 "There's no such thing as self-defense in mental health."  
11 There's -- you have to protect the patient. That's what  
12 you're there to do.

13 You're not there to defend yourself against them.  
14 You're just there to deal with the assaultive behavior or  
15 whatever the behavior is at that time.

16 Q And did they teach you that you have to treat the  
17 patients with dignity, and you have to treat them with care  
18 which is skillful, humane and sensitive?

19 A I'm sure during orientations and stuff they -- it's  
20 just expected. That's just a normal human state. I don't  
21 think they ever said, Hey, you need to do that.

22 I think that's implied. I think if we did that,  
23 we would be disciplined if we were acting in that function.

24 Q All right.

25 At that point in time, did you have occasion to

1 see Joyce Weigers? Was she on the scene?

2 A At what point now?

3 Q When you just got outside the door and Phil Bragg made  
4 that comment to Jason Davis.

5 A I'm not sure at what point she came into the scene. I  
6 know when she -- I know when I finally realized she was  
7 there, but I'm not sure when she got there.

8 She wasn't there -- I didn't notice her there when  
9 I got there from the code green.

10 Q Okay. Tell us what occurred at this point.

11 A Jason initially lunged at Phillip Bragg. Phillip was  
12 able to bury his hands away as he retreated. The staff  
13 very quickly took Jason down the floor.

14 He went down face first but was able to rotate and  
15 look back up at the staff as the staff basically encircled  
16 him on the floor, pinning him to the floor.

17 Q What did you see at this point?

18 A I'm watching this go on. I'm in the hallway. I'm at  
19 the feet. Jason is laying down the hallway, head is away  
20 from me, feet are towards me. Staff is encircling him.  
21 And it's not what I saw; it's what I felt. I initially  
22 felt the thud through the floor and then heard a thud.

23 Q If I could stop you right there, was this a loud thud?

24 A The thud I felt first. It wasn't the noise.

25 THE COURT: Through your feet, you mean?

1 THE WITNESS: Yes, it was like a (gesturing).  
2 You could feel it coming through the floor.

3 Q You could feel it in your feet?

4 A Right, I felt it first.

5 Q You felt it and did you also hear it at the same time?

6 A I'm not sure if it's -- I don't know if I actually  
7 heard it. I felt it and then saw it.

8 Q What type of floor is on the hallway between the open  
9 quiet room or the seclusion room and the four-point  
10 mechanical --

11 A I believe they're cement slabs, fire floors, yes.

12 Q Isn't it fair to say also there's a thin pile carpeting  
13 on top of that floor?

14 A Maybe even a subfloor.

15 Q And so you felt that thud in the slab of concrete that  
16 was on the floor?

17 A Whatever's on the floor I felt it through it. I don't  
18 know what's under the carpet. I assume it's cement or --

19 Q Okay. At this point in time, what happened next?

20 A The thuds drew me to Phillip Bragg punching Jason Davis  
21 in the face.

22 Q And how many times did you see Phillip Bragg punch  
23 Jason Davis in the face?

24 A Maybe five, four or five.

25 Q Backing up for a second, did Jason Davis ever make

1 physical contact with Phil Bragg?

2 A He didn't hit him. He lunged at him. He kicked. I  
3 didn't see where the kick ended up. I didn't see if it hit  
4 Phillip at all. I didn't see him hit Phillip.

5 Phillip was able to parry the hands away as he  
6 retreated. Staff was all over Jason, all around him.

7 Q So the staff had him pinned to the floor?

8 A The staff took him to the floor. He rotated up facing  
9 the staff, trying to struggle with the staff. The staff  
10 had all his limbs. They secured him pretty quickly. Did a  
11 good job on that.

12 Q During the course of this altercation, did you have  
13 occasion to talk to anybody?

14 A I turned to Joyce Weigers who was on my right shoulder.

15 THE COURT: To whom?

16 THE WITNESS: Joyce Weigers.

17 A When I saw Jason Davis being punched, I said, Did you  
18 see that? Are you going to do anything about this? Are  
19 you going to allow this to happen?

20 That's pretty much what I said to her.

21 Q What did she say?

22 A She didn't say anything, and I really wasn't waiting at  
23 that point. Some more was occurring and at that point I  
24 decided to intervene.

25 Q After the incident occurred, did you hear her say

1 anything to Jason Davis?

2 A At some point later, she did say something to Jason  
3 Davis.

4 Q What did she say?

5 A She got down --

6 MR. SHUGRUE: Objection.

7 THE COURT: Overruled.

8 MR. SHUGRUE: Can we have as to time?

9 MR. C. PERRY: I'll be glad to --

10 THE COURT: Yes. You mean the time of day or  
11 how long after or what?

12 MR. C. PERRY: I'll strike the question, your  
13 Honor.

14 THE COURT: All right.

15 Q In the immediate aftermath of the incident while still  
16 in the hallway on August 12, 1993, did Joyce Weigers say  
17 anything to Jason Davis?

18 A At the end of the restraint after he was handcuffed.

19 Q And what did she say?

20 A Got down on her hands and knees and face to face level  
21 basically said, This is what you get when you act -- this  
22 is what happens when you act like this.

23 One of those type of comments.

24 Q And where was he at that point in time?

25 A Handcuffed on his face.

1 Q On the floor?

2 A On the floor.

3 Q Bleeding?

4 A Bleeding.

5 Q Did you see the blood?

6 A Well, not then. I saw it prior to that. I saw it when  
7 I -- when I initially saw the punches, I turned to Joyce  
8 Weigers. Then abuses continued by Phillip Bragg in the  
9 form of a twisting technique on his head and some kneeling  
10 to his head.

11 He came up on his head with his hands and put his  
12 knees on his head. I believe the knees were first and then  
13 the twisting occurred. I believe that happened when they  
14 were rotating the patient over to a face-down position.

15 The twist was so severe I at that point went  
16 around the pile, around Phillip Bragg, pushed Phillip Bragg  
17 off Jason Davis's head with my shoulder and then instantly  
18 went to his neck.

19 And at that point, I noticed that his eyes were  
20 rolling out of his head. You could see the whites of his  
21 eyes. The eyes were up to the top. He was in a what I  
22 would call a semiconscious state.

23 There was some bleeding on the floor. There was  
24 swelling, bruising all in his face noticeable at that time,  
25 and it was at that point that I was asked by a nursing

1 staff to handcuff Jason Davis.

2 Q Did you do so?

3 A I handcuffed Jason Davis when they requested me to do  
4 so.

5 Q In the immediate aftermath of the incident, did you  
6 have occasion to go over and check with Jason Davis  
7 concerning his neck?

8 A I -- in retrospect, in all my years of EMT training and  
9 first-responder training, I probably could have done a  
10 better job than that.

11 I feared he had a hurt neck, that his neck might  
12 have been broken. But in all the aftermath, I should have  
13 done a little bit more to immobilize it.

14 I didn't. I had lost -- I had enough going on --

15 Q Had you a chance to check his neck because you thought  
16 his neck was broken?

17 A That's the reason I went around the pile and didn't  
18 wait for Joyce Weigers to respond. I went to get him off  
19 his head.

20 Q What happened at that point?

21 A Phillip took up a position against his -- the back wall  
22 holding his arm and stayed outside of the restraint at that  
23 point.

24 I handcuffed Jason Davis --

25 Q Let me just stop you right there. If I could just stop

1 you right there.

2 Did you instruct staff at that point in time to  
3 twist the handcuffs to inflict pain on Jason Davis?

4 A No, no. I never instructed them to --

5 THE COURT: Did you have any authority to  
6 instruct them?

7 THE WITNESS: Well, at this point, he's  
8 handcuffed. He's in my handcuffs. I need to instruct  
9 them.

10 When they decided to lift Jason Davis to carry him  
11 in the four-point room, they didn't realize they were  
12 hurting him. They picked him up by the limbs. And when  
13 you pick up somebody by the back with handcuffs, that hurts  
14 the dickens.

15 I said, You need to support the body and take the  
16 weight off the handcuffs. And the MHWs did that and  
17 carried him right into the four-point room.

18 Q Did you ever instruct staff at the altercation to  
19 inflict pain on Jason Davis?

20 A No. I instructed I believe it was Lenny Fitzpatrick.  
21 During the release phase of the handcuffs, Jason Davis was  
22 placed on the -- you had the four-point mattress. He was  
23 placed on the four-point mattress, head towards the door,  
24 feet towards the window, face down.

25 We secured the feet first, handcuffed, patient

1 still handcuffed on his backside. I would have been on the  
2 left side of the bed. Lenny Fitzpatrick would have been on  
3 the right side of the bed as you look at that photo.

4 When you put handcuffs on and you do them right  
5 and correctly, the handcuff keys are very accessible. You  
6 can get them off. But in an emotional time sometimes they  
7 twist around. They're on a chain.

8 There are more expensive kinds where you have the  
9 keys in the right place all the time. These aren't the  
10 kind. I wanted to get the handcuffs off quickly. I wanted  
11 to get a doctor. I couldn't get at the keys.

12 In order to take the handcuffs off, I had to  
13 unlock my side, pass them to Lenny Fitzpatrick. And before  
14 I did that, I gave Lenny Fitzpatrick some instructions to  
15 hold the handcuffs in a neutral position, which is straight  
16 up and down.

17 If at any time Jason Davis, a strong man, gets  
18 free, starts swinging these handcuffs around, what I wanted  
19 him to do was just rotate the handcuffs and drop his body  
20 weight on it until I could get there. This would keep  
21 somebody from getting hit in the head with piece of steel.

22 We never needed to do that. I rounded the body,  
23 rounded Lenny Fitzpatrick. The handcuffs stayed in the  
24 neutral position, and they were released. As soon as I got  
25 my handcuffs off, that's when I ran to get a doctor. I

1 didn't wait for the hands to be restrained.

2           There was enough staff. I went to get medical  
3 help.

4 Q Did any of the staff who were present at the scene ask  
5 you to apply handcuffs to Jason Davis?

6 A The staff that was on the floor with Jason, they had  
7 him facedown. His feet were crisscrossed to his butt, his  
8 arms were crisscrossed behind his back.

9           I had asked the staff -- apparently, they are  
10 trained to do that under some certain circumstances. I  
11 felt it was painful, and at this point there was no fight  
12 in Jason. I asked them to reduce those, and at the same  
13 time they asked me to handcuff Jason Davis, which seemed  
14 like a reasonable request to do during the move, and that's  
15 what we did.

16 Q Did any of the staff apprise you of the circumstances  
17 that took place in your absence during that time period  
18 when you had traveled back to Chauncy Hall?

19 A Wouldn't have been possible. Just wouldn't have been  
20 possible. Wouldn't have been smart to at that point.

21 Q So at that point in time, Jason Davis was transported  
22 and placed upon the four-point restraint?

23 A After he was handcuffed in the hall after staff asked,  
24 he was brought into the four-point bed.

25 Q And at this point in time, did you have an occasion to

1 effectuate an arrest upon Phillip Bragg?

2 A Not at that -- I first got my handcuffs back, and then  
3 I went to the nursing conference room and looked for a  
4 doctor.

5 Q And you found a doctor, too, right?

6 A Found a doctor.

7 Q And her name?

8 A I don't know her name. I can point her out if she's  
9 here.. I think she's in the hall.

10 Q Was she here this morning?

11 A She's in the hall.

12 Q She's in the hall.

13 And you had a conversation with this doctor?

14 A I was not really having a conversation with anybody at  
15 that point. I was basically saying, Jason is hurt; we need  
16 help.

17 It was quick. I wasn't having a conversation. I  
18 said he had been beaten; he was bleeding, swelling. I was  
19 worried about his neck. I said, Somebody needs to get in  
20 there and check his neck.

21 And I never reentered the room at that point. I  
22 then went to where Phillip Bragg was up against the wall  
23 and asked Phillip to come with me.

24 Q And at that point in time, did you have occasion to put  
25 on two sets of handcuffs on Phillip Bragg?

1 A No, I -- initially he was taken into the back nursing  
2 area. It's a private area away from other staff and other  
3 clients.

4 Still, there was a ward full of people, and  
5 clients were -- I'm not sure if they were coming back at  
6 that point, but I took him to a private area.

7 He was advised that he was under arrest for  
8 assault and battery. He was asked to take a position so I  
9 could pat frisk him for a weapon. He was handcuffed and  
10 Mirandized at the same time and then, to your question,  
11 handcuffed and when -- in a second pair of handcuffs later  
12 when he was in pain and asked for some relief.

13 Q So you transported him to the Court?

14 A Initially took him off the unit to my cruiser, was in  
15 the company of my chief this whole time. He had trickled  
16 into this restraint at some point. He was there during the  
17 arrest, stood --

18 You know, he was my backup at that point. There  
19 was a conversation with a nursing supervisor on the way out  
20 and continued my process to -- at that point, it would have  
21 been during the middle of the day. I would have taken him  
22 straight -- I would just take him straight to --

23 (Juror's chair breaks.)

24 (Pause in proceedings.)

25 **THE COURT:** You don't want to come back here

1 as a plaintiff.

2 (Laughter.)

3 THE COURT: Is it all right? Want to take  
4 the other chair? Sorry.

5 A So out of the building, put on an extra set of  
6 handcuffs to give him more span behind his back -- I guess  
7 it was too tight for him. Then we were in the processing  
8 of going to the Grafton State Police barracks to do the  
9 booking process there.

10 I'm not sure if it was my idea or in communication  
11 with the state police that we decided to do the booking  
12 process right at the courthouse since court was still in  
13 session, which is what we ended up doing.

14 Q At that point in time, did you have occasion to consult  
15 with probation at the courthouse?

16 A Right. Probation -- during the actual session --  
17 during the arraignment -- initially we met with the court  
18 officers.

19 MR. RICCIARDONE: I object. The answer's  
20 yes.

21 THE COURT: All right. You may answer the  
22 question. You can ask the next question.

23 Q All right.

24 What, if anything, did you learn as a result of  
25 consulting with probation at the district court the day you