

STATE OF SOUTH CAROLINA

COUNTY OF *Greenville*

IN THE COURT OF COMMON PLEAS

Benjamin Heyward #165514 Plaintiff(s)

CIVIL ACTION COVERSHEET

2013-CP-23-05028

vs.

South Carolina Department of Corrections Defendant(s)

RECEIVED

DEC 15 2014

SC Court of Appeals

(Please Print)

Submitted By: *Benjamin Heyward*

SC Bar #:

Telephone #:

Address: *Lieber Corr Inst*

Fax #:

P.O. Box

Other:

Ridgeville SC 29472

E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|--|---|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> Employment (120) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20 <u> </u>-CP-<u> </u>-<u> </u> <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Assault/Slander/Libel (300) <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Other (399) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Other (399) |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Other (799) | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Driver's License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture-Consent Order (850) <input type="checkbox"/> Other (399) | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input checked="" type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Administrative Law Judge (980) <input type="checkbox"/> Public Service Commission (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) |
| <p>Special/Complex/Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) | <ul style="list-style-type: none"> <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of-State Depositions (650) <input type="checkbox"/> Sexual Predator (510) | | |

Submitting Party Signature:

Benjamin Heyward

Date: *12/11/14*

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et seq.

Exhibit - A

MDCI880D
OMINMDCA

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
SCDC HEALTH SERVICES: MEDICAL SUMMARY

08/06/14
C055948

SCDC# 165514 HEYWARD, BENJAMIN -

PAGE 46

- * **ENCOUNTER: 250**
HEALTH SUMMARY UPDATED TO BOTTOM BUNK.
SIGNED OFF ON 12/31/12 @ 11:48 BY AMY R ENLOE, NURSE PRACTITIONER III
NOTED.
SIGNED OFF ON 12/31/12 @ 13:12 BY JENNIFER Y DEAN, UNCLASSIFIED
- ** ENCOUNTER: 249 EMERGENCY INHOUSE 12/31/12 11:12 PERRY COMP
I/M REPORTS TO MEDICAL STATING OVER THE LAST THREE WEEKS HE HAS HAD 3 NOSE
BLEEDS THAT OCCUR AT NIGHTTIME. STS "I JUST PUT A PIECE OF TISSUE UP EACH
NOSTRIL AND IT STOPS IT." ALSO REPORTS HEADACHES. HAS RX FOR NORVASC BUT IS
NOT TAKING MED. STS "I KNOW THIS IS MY BLOOD PRESSURE SO I GUESS I BETTER
TAKE MY MEDS SO I DONT HAVE A STROKE." BP:150/80 P:70 R:18 WEIGHT:147. NO A
CTIVE BLEEDING NOTED. SPEECH CLEAR AND APPROPRIATE. A&OX3/NAD. REQUESTING
READERS, 1.75+ STRENGTH ISSUED PER V/O MS ENLOE. THIRD, I/M REQUESTING BOTT
OM BUNK PASS DUE TO CHRONIC LOWER BACK PAIN. STS GETS RELIEF FROM IBUPROFEN
BUT IT IS HARD TO GET UP ON BED NIGHT AFTER NIGHT.
I/M FILLED OUT REFILL FORM FOR NORVASC, GIVEN TO PHARMACY RN.
WILL ROUTE TO FNP/MD FOR REVIEW/ORDERS.
SIGNED OFF ON 12/31/12 @ 11:21 BY JENNIFER Y DEAN, UNCLASSIFIED
HS UPDATED.
SIGNED OFF ON 12/31/12 @ 11:48 BY AMY R ENLOE, NURSE PRACTITIONER III
- ** ENCOUNTER: 248 DOCTOR'S CLINIC 12/14/12 7:24 PERRY COMP
LIPD PANEL AND LFT IN 6 MONTHS.
SIGNED OFF ON 12/14/12 @ 7:24 BY AMY R ENLOE, NURSE PRACTITIONER III
LAB SLIP FILLED OUT/LABS SCHEDULED.
SIGNED OFF ON 12/14/12 @ 9:02 BY JENNIFER Y DEAN, UNCLASSIFIED
- ** ENCOUNTER: 247 FOLLOW-UP SICK CALL 12/14/12 6:59 PERRY COMP
ABD LABS. HGB 13.1, HCT 40.4, MPV 11.1, TOTAL BILIRUBIN 2.10, CHOL. 216 AND
LDL 140.
SIGNED OFF ON 12/14/12 @ 7:01 BY JOY L BISHOP, MEDICAL ASSISTANT TECH I
SIGNED OFF ON 12/14/12 @ 7:21 BY AMY R ENLOE, NURSE PRACTITIONER III
- ** ENCOUNTER: 246 LAB CLINIC 12/12/12 9:40 PERRY COMP
INMATE CAME TO MEDICAL FOR LAB WORK WHICH WAS A CBC, LIPID AND A LIVER. INM
AETS BLOOD WAS DRAWN FROM LEFT ANTECUBITAL. PRESSURE APPLIED X 2 MINS. SPEC
IMEN LABLED AND READY TO TRANSPORT.
SIGNED OFF ON 12/12/12 @ 9:42 BY JOY L BISHOP, MEDICAL ASSISTANT TECH I
NOTED.
SIGNED OFF ON 12/12/12 @ 10:35 BY KATHERINE WATSON BURGESS, REGISTERED NURSE

**

Exhibit-B

MDCI880D
OMINMDCA

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
SCDC HEALTH SERVICES: MEDICAL SUMMARY

08/06/14
C055948

SCDC# 165514 HEYWARD, BENJAMIN -

PAGE 42

SIG:AS DIRECTED

SIG:

START DATE: 04/25/13 TOTAL DAYS: 12

MD:ENLOE, AMY -

IBUPROFEN 600MG

SIG:1 PO QID PRN WITH FOOD #90/ MONTH TAKE AFTER PRE

SIG:D PACK IS COMPLETED

START DATE: 05/07/13 TOTAL DAYS: 60

MD:ENLOE, AMY -

SIGNED OFF ON 04/25/13 @ 8:47 BY AMY R ENLOE, NURSE PRACTITIONER III
NOTED. WILL ISSUE MEDS UPON ARRIVAL FROM KCI PHARMACY.

XRAY REQ COMPLETED AND PLACED ON MS BURGESS'S DESK FOR SCHEDULING.

SIGNED OFF ON 04/25/13 @ 10:01 BY JENNIFER Y DEAN, UNCLASSIFIED

** ENCOUNTER: 263 FOLLOW-UP SICK CALL 04/22/13 11:20 PERRY COMP
I/M SIGNED UP FOR SICK CALL C/O CONTINUED NECK, BACK, AND LEFT SHOULDER PA-
IN. I/M HAS BEEN SEEN FOR THIS ISSUE IN SICK CALL AND HAS AN FNP APPT SCH-
EDULED FOR 04/25/13. WILL ROUTE TO MD/FNP FOR FURTHER REVIEW.
SIGNED OFF ON 04/22/13 @ 11:27 BY KATHERINE WATSON BURGESS, REGISTERED NURSE
SIGNED OFF ON 04/22/13 @ 11:30 BY AMY R ENLOE, NURSE PRACTITIONER III

** ENCOUNTER: 262 SICK CALL 04/01/13 13:59 PERRY COMP
S> INMATE SEEN IN C DORM MEDICAL ROOM FOR SICK CALL WITH C/O OF CONTINUED
PAIN FROM FALLING FROM TOP BUNK ON 3/30/13, C/O OF NECK AND UPPER BACK PAIN
O> TEMP=098.4 PULSE= 68 RESP=20 BP=124/ 90 WEIGHT=158 O2 SAT= 0
INMATE ALERT AND ORIENTED, VSS, IN NAD AT THIS TIME. STEADY GAIT.
C/O OF NECK PAIN, ABLE TO MOVE NECK FROM SIDE TO SIDE, NO OBVIOUS INJURY
NOTED. NO EDEMA, REDDNESS OR DISCOLORATION NOTED. REQUESTING KNEE BRACE FOR
RIGHT KNEE, S/P OLD INJURY WHEN YOUNGER. REQUESTING 1.25 READING GLASSES
FROM PROPERTY. RIGHT KNEE WITH NOTED OLD SCAR TO KNEE, NO OBVIOUS EDEMA, NO
DISCOLORATION/BRUISING. AMBULATING WELL TO AND FROM MEDICAL AREA
A> DEFER
P> APPT HAS BEEN SCHEDULED WITH FNP ENLOE TO DISCUSS ABOVE ISSUE
WILL CONTACT PROPERTY AND ATTEMPT TO RETRIEVE KNEE SLEEVE
WILL ROUTE TO FNP/MD FOR REVIEW
SIGNED OFF ON 04/01/13 @ 14:05 BY FAITH M CHAPPELL, UNCLASSIFIED
NOTED
SIGNED OFF ON 04/02/13 @ 9:44 BY BENJAMIN F LEWIS JR, PHYSICIAN II

** ENCOUNTER: 261 EMERGENCY INHOUSE 03/30/13 6:53 PERRY COMP
SGT SMITH CONTACTED MEDICAL, IM STATED HE FELL OFF TOP BUNK AND HURT HIS
KNEE.
SKIN WARM/DRY AND INTACT, NO INFLAMMATION NOTED. SMALL AMOUNT OF REDNESS
AT KNEE CAP. IM HAS FULL ROM WITH A SMALL AMOUNT OF FACIAL GRIMACING WITH
ROM EXERCISES. NAD AT THIS TIME. IM DENIES INJURY TO OTHER EXTREMITIES.
IM WAS GIVEN ICE PASS AND INSTRUCTED TO SIGN UP FOR SICK CALL FOR MONDAY
IS SYMPTOMS WORSEN. INSTRUCTED IBUPROFEN FOR PAIN.
SIGNED OFF ON 03/30/13 @ 6:58 BY ANGELA RENEE WAGNER, REGISTERED NURSE I
NOTED
SIGNED OFF ON 04/01/13 @ 15:11 BY BENJAMIN F LEWIS JR, PHYSICIAN II

Exhibit-C

WARDEN'S DECISION AND REASON:

Inmate Heyward, Benjamin 165514



In regards to PCI 0796-13. I have reviewed your grievance and the facts.

IGC Hindenburg contacted Operations and informed them of this issue with both occupants having bottom bunk passes. On 04/04/13 you were moved to the bottom bunk and I/M Davis was moved to another room. It is also noted that you were seen and treated by Medical services for your knee. As I am not a medical professional, I depend on our Medical Staff at PCI for proper treatment information. You were evaluated and given a pass for ice to be used on your knee and told to take ibuprofen for pain. Per Medical Staff, this is the appropriate treatment for you. With this information I consider your grievance resolved. If you do not agree with this decision, see Step 5.

BH

I accept the Warden's decision and consider the matter closed.
I do not accept the Warden's decision and wish to appeal.

Benjamin Heyward
Grievant Signature Date

L. Cantor
Warden Signature Date 4/11/13

C. Hindenburg
IGC Signature Date APR 25 2013

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1.
 2. Complete each section in its entirety, writing only in the space provided for inmate use.
 3. Only one (1) issue is to be addressed on each form.
 4. Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time. Do not write in the space provided for the Warden's response.
- If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision to the Institutional Grievance Coordinator.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE FORM

STEP 1

INMATE NAME: Benjamin Heyward
SCDC NUMBER: 165514
INSTITUTION: Ferry Inst
HOUSING UNIT: D CX-8
WORK ASSIGNMENT: _____

Office Use Only
Grievance No. FCI-0176-13
Code: General IP-15
Policy _____
Disc. Hear. _____
Class. _____
Date Received APR 04 2013
IGC Initials CA

APR 02 2013

STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)

on 3-27-13 off. Johnson moved me from D-Dorm out of a one man cell (DX-7), to C Dorm into a two man cell on the top bottom, and I am assign to a bottom bunk only. ON 3-30-13 as I was getting down from ~~on~~ the top bunk I slip and fell to the floor.

ACTION REQUESTED:

Three working days off without pay.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT:

I told Lt. Ladson I am bottom bunk only and he refused to do anything about this matter.

Benjamin Heyward 4-1-13
Grievant Signature Date

ACTION TAKEN BY IGC:

See Warden's Response

[Signature] 4-4-13
IGC Signature Date

Exhibit -D

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2305028

Benjamin Heyward

PAUL B. WICKENSIMMER

2014 DEC 1 PM 4 00

South Carolina
Department Of
Corrections
Ms Holiday
Mr Laslay

L Johnson

Mr Lee
Mr Dean

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

Defendant's Motion for Summary Judgment is granted as there is no genuine issue of material fact as to whether SCDC's alleged negligence in double booking the lower bunk proximately damaged Mr. Heyward.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if an amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge

Exhibit E

may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Jan 14

2138

11/24/2014

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

12-1-14

12-1-14

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Benjamin Heyward 165514 Lieber Correctional Institute P O
Box 205 Ridgeville, SC 29472

James Victor McDade Doyle, Tate & McDade, P.A. P.O.
Box 2125 Anderson, SC 29622

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer

Court Reporter

**Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court**

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

Benjamin Heyward, #165514,)

Plaintiff,)

vs.)

South Carolina Department of Corrections,)

Ms. L. Johnson, Ms. Holiday, Mr. Lee,)

Mr. Lasby, Mr. Dean,)

Defendants.)

MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT
2013-CP-23-05028

STATEMENT OF FACTS

Plaintiff is an inmate incarcerated within the South Carolina Department of Corrections. In March, 2013, Plaintiff was incarcerated at Perry Correctional Institution. On March 27, 2013, Plaintiff was moved to a two man cell and assigned the top bunk. Plaintiff alleges that he had a bottom bunk pass.

Plaintiff alleges that on March 30, 2013, he was getting down from the top bunk and fell, injuring his right knee. Plaintiff admits that he had gotten up and down from the top bunk numerous times in the three days he was in that cell. The Defendants assert that Plaintiff cannot show gross negligence as required by the South Carolina Tort Claims Act (SCTCA). The Defendants further assert that Plaintiff's fall was not caused by any condition which merited a bottom bunk pass. The Defendants further assert that the individual Defendants should be dismissed as parties pursuant to the SCTCA and ask that the Court grant their Motion for Summary Judgment.

ARGUMENT

I

The named Defendants are not proper parties pursuant to the SCTCA

The SCTCA governs actions against governmental entities under South Carolina law. SC Code Ann. §15-78-70(b) provides that "the agency or political subdivision for which the employee was acting" shall be named as a party defendant. The Defendants Johnson, Holiday, Lee, Lasley and Dean are not proper parties under the SCTCA and should be dismissed.

II

Summary Judgment should be granted as the Plaintiff cannot show gross negligence

SC Code Ann. §15-78-60(25) provides that “[t]he governmental entity is not liable for a loss resulting from: (25) responsibility or duty including, but not limited to supervision, protection, control, confinement, or custody of any ... prisoner, inmate ... except when the responsibility or duty is exercised in a grossly negligent manner.” “Gross negligence is the failure to exercise slight care. For a person who is so indifferent to the consequences of his conduct as to not give slight care to what he is doing, he is guilty of gross negligence. Gross negligence involves a conscious failure to exercise due care.” Etheredge v. Richland School District One, 330 S.C. 447, 445, 499 S.E.2d 238, 242 (S.C.App. 1998).

The Defendants have presented the affidavit of Lt. Thomas Lasley. Lt. Lasley states that he is a Lieutenant who was assigned to the Special Management Unit in March, 2013 (Lasley Aff. ¶2). Lasley does not recall Plaintiff complaining about having a bottom bunk pass, but states that he would not have told Plaintiff to “tell me something else.” (Lasley Aff. ¶3). If Plaintiff had told Lasley he had a bottom bunk pass, Lasley would have tried to find a bottom bunk, but there might have been no bed space available (Lasley Aff. ¶4. In that event, research would need to be done to make sure a bottom bed was open and that Plaintiff was compatible with the cellmate per classification rules (Lasley Aff. ¶4). If Plaintiff had appeared suicidal, he would have been removed from the cell and placed in the shower until a single cell room was available (Lasley Aff. ¶3). In that event, Plaintiff would have been placed on crisis intervention (Lasley Aff. ¶3).

Plaintiff alleges that he had gotten on and off the top bunk twelve times per day the prior two days without incident (Plaintiff’s depo., pg. 26, lines 2-9). Plaintiff fell when he was wearing socks and his left foot slipped off the metal bed frame. (Plaintiff’s depo., pg. 24, line 22-pg.25, line 8).

It is clear that Plaintiff’s claims, if true, do not rise to the level of gross negligence. The Defendants are entitled to summary judgment on this issue.

III

Plaintiff cannot show gross negligence that proximately caused his fall

Plaintiff alleges that he was given a bottom bunk pass for low back pain (Plaintiff’s depo., pg.7, lines 10-18). Plaintiff did not get a bottom bunk pass for knee problems (Plaintiff’s depo., pg. 8, lines 6-8).

Plaintiff’s medical records show back pain as early as September 9, 1999 when Plaintiff complained that he was having “trouble with his back again.” (medical summary encounter 21). Plaintiff also complained of back pain on November 28, 2000, February 22, 2001, February 15, 2001, March 5, 2001, May 14, 2001, June 22, 2001 and September 2, 2004 (see medical summary). On December 31, 2012, Plaintiff requested a bottom bunk pass “due to chronic lower back pain.” Plaintiff’s

medical records were updated to bottom bunk on that date due to difficulty getting up on the bed (medical summary encounter 249).

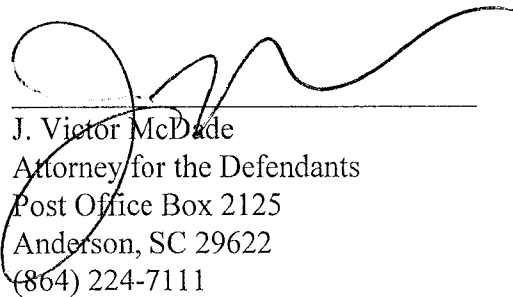
Plaintiff alleges that he was in the cell and assigned the top bunk from March 27, 2013 until March 30, 2013, when he fell **getting down**. During that time, Plaintiff states that he got up and down the top bunk three times a night and twelve times a day total without prior difficulty (Plaintiff's depo., pg. 26, lines 2-9). Plaintiff did not fall until March 30, 2013. Plaintiff fell getting down to use the bathroom. Plaintiff does not state in his Complaint or deposition that the back pain or difficulty getting up on the bed contributed to the fall. Instead, he states that he was wearing socks and his left foot slipped off the frame of the bed (Plaintiff's depo., pg. 24, line 22-pg. 25, line 8).

It is clear that Plaintiff's fall was not related to the reason he was given a bottom bunk pass, difficulty getting up on the bed. Plaintiff's low back pain was likewise not a factor in Plaintiff's fall. Plaintiff does not mention low back pain contributing to his fall in either his Complaint or deposition. Plaintiff had gotten onto and down from the top bunk twelve times per day without incident and had been in the cell for three days. Thus, Plaintiff's injury was not proximately caused by any act of negligence/gross negligence asserted by the Plaintiff. The Defendants are entitled to summary judgment.

Respectfully submitted.

DOYLE, TATE & MCDADE, P.A.

By:



J. Victor McDade
Attorney for the Defendants
Post Office Box 2125
Anderson, SC 29622
(864) 224-7111
jvmcdade@dotmlaw.com

Dated: November 13, 2014

1 STATE OF SOUTH CAROLINA
2 COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

3
4 BENJAMIN HEYWARD, #165514,
5 Plaintiff,

6 vs. CASE NO. 2013-CP-23-05028

7 SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, MS. L.
8 JOHNSON, MS. HOLIDAY, MR. LEE, MR. LASBY, MR. DEAN,
9 Defendants.

10

11

DEPOSITION OF: BENJAMIN HEYWARD

12

DATE: September 19, 2014

13

TIME: 1:44 PM

14

LOCATION: Lieber Correctional Institution
136 Wilborn Avenue
Ridgeville, SC

15

16

TAKEN BY: Counsel for the Defendant

17

REPORTED BY: LORA L. McDANIEL,
Registered Professional Reporter

18

19

A. WILLIAM ROBERTS, JR. & ASSOCIATES

20

Fast, Accurate & Friendly

21

22 Charleston, SC Hilton Head, SC Myrtle Beach, SC
(843) 722-8414 (843) 785-3263 (843) 839-3376

23

24 Columbia, SC Greenville, SC Charlotte, NC
25 (803) 731-5224 (864) 234-7030 (704) 573-3919

Benjamin Heyward - September 19, 2014

1 to medical. And he signed his name the day I went to
2 see him.

3 Q. I want to ask you, you say in your
4 Complaint that you were assigned to the top bunk
5 March 27th of 2013?

6 A. I was assigned.

7 Q. You were given a top bunk on March 27,
8 2013.

9 A. If that's the right day, yes.

10 Q. That's what you say in your Complaint.

11 A. Yes, sir.

12 Q. Who gave you a top bunk?

13 A. That's what I don't know. I didn't know
14 who work in operation that day. I pick Officer
15 Johnson, Officer Holiday, Corporal Lee. They three
16 usually work in operation. I was in SMU. I don't
17 know who was working at the time. Matter of fact --

18 Q. Did you stay in the same cell, or did
19 somebody else come in?

20 A. They moved me out of one man cell into
21 another whole dorm, into a two-man cell and assign me
22 the top bunk. My cellmate who was in there, he had
23 bottom bunk pass, too. He was already on the bottom
24 bunk.

25 Q. Did you tell anybody anything?

Benjamin Heyward - September 19, 2014

1 A. I told Lieutenant ~~Ladson~~^{Lasley} first. I told
2 him I need bottom bunk, ~~pass~~. He told me to tell him
3 something else. I said you can call medical or
4 operation. He refused to do so.

5 So the expression I got from that, he want
6 me to tell him I was suicidal so he can take me out
7 and put me in one man cell, *on Crisis intervention status*.

8 Q. You tried that?

9 A. No, sir, that's the expression I got when
10 he tell me tell him something else. What else am I
11 going to tell him?

12 Q. That's what you thought he meant by that?
13 If you tell ~~me~~^{him} that you're suicidal, **HE** can do that?

14 A. Yes, yeah. Yes, sir.

15 Q. He wasn't trying to be a smart aleck; he
16 was trying to accommodate you in a different way?

17 A. No, he was being a smart ass. The officer
18 at Perry known to abuse their authority.

19 Q. When you say he refused to call, is that
20 something you assumed, or did he tell you: I'm not
21 going to call?

22 A. He didn't say nothing. He just ignored
23 the question.

24 Q. He didn't say: I'm not going to call. To
25 your knowledge, he did call?

Exhibit L

Benjamin Heyward - September 19, 2014

21

1 A. He didn't.

2 Q. He may have called and not got the right
3 response?

4 A. He didn't.

5 Q. How do you know that?

6 A. He just walk off from the cell. With the
7 attitude he had. He had enough authority being the
8 lieutenant, he was the supervisor. He had enough
9 authority to move me on his own. He didn't have to
10 call operation to get no verification.

11 Q. At that point you went in and you --

12 A. No, I lay on the bunk. Lieutenant Dean
13 came that night. I asked Lieutenant Dean. I told
14 him I ~~need~~^{was} bottom bunk pass.

15 Q. What did you tell him?

16 A. Lieutenant Dean tell me he ain't got
17 nothing to do with that. And my expression on that,
18 being that he work night shift, I guess he thought
19 ~~same~~ day shift supposed to handle it.

20 Q. That night you stayed in the top bunk?

21 A. Yes.

22 Q. How do you get up and down to the top
23 bunk?

24 A. It's so high. It's so high. I got to do
25 this with both hands and hold and come down, use my

Benjamin Heyward - September 19, 2014

1 muscle in my arm to come down ^{with} ~~to~~ my foot. I'm so
2 short, my foot hit the bottom bunk. And they got a
3 low four-inch little bar; ^{To} put your other foot on ~~it~~.

4 Q. Is that bar you put your foot on it, then
5 you step up to the top bunk?

6 A. You can do it that way, too. It easier to
7 step on your roommate bed and then get up.

8 Being I'm so short, my roommate tell me
9 don't be stepping on his mattress, waking him up.
10 It's hard for me to lift my left leg up to reach the
11 top bunk.

12 Q. If your roommate wasn't asleep in the bed,
13 you would step on your roommate's bed and then to the
14 four-inch bar and up to the top?

15 A. It's better that way. Easier.

16 Q. What happens if your roommate is asleep?
17 You're not going to step on his bed?

18 A. That's what I got the fall. I was trying
19 not to wake him up. 11:30 p.m., Perry, ~~like~~ all the
20 lights in SMU turned off. It's controlled by booth.
21 It's real dark in them cells once all the light go
22 off.

23 Q. What time did this happen?

24 A. The light was off, so I know it was after
25 11:30. I guess, around 12:00, after 12:00. I really

Benjamin Heyward - September 19, 2014

1 don't know what time it was.

2 Q. If the lights were off, what were you
3 doing up?

4 A. ~~No~~, I was getting down to use the
5 bathroom.

6 Q. You were getting down?

7 A. Yes, sir.

8 Q. I thought you said you were going up?

9 A. No, no.

10 Q. How would you come down?

11 A. Like I said, I got to sit down facing the
12 door with my back to the wall, using my arm.

13 Q. So you're facing the door. And you got
14 your feet hanging off the side of the bed?

15 A. The back of the bed. I'm sitting here.
16 This the bed behind me. This the end of the bed.
17 And this the side of the bed.

18 Q. Okay. You go to the end of the bed?

19 A. Yes. I can't get down from the side.
20 Ain't no way you can get down from the side.

21 Q. You're on one end of the bed, and you're
22 putting your ~~hands~~^{Feet} down on the mattress or the frame?

23 A. The steel.

24 Q. So you got both ~~hands~~^{Feet} on the frame. What
25 do you do after that?

Benjamin Heyward - September 19, 2014

1 A. I lower myself down using my arms until my
2 foot touch the frame of the bed. Try not to ~~hit with~~ ^{step on}
3 roommate mattress.

4 Q. When you're touching the frame of the bed,
5 you're not touching the floor. You're trying to find
6 four-inch piece of metal to stand on?

7 A. The four-inch piece of metal is on the
8 right-hand side. No matter how I get down, I got to
9 touch my roommate bed, ~~to free~~. I got to touch it.
10 I cannot touch the floor.

11 Q. What are you trying to get footing on?

12 A. The frame, my roommate bed frame.

13 Q. Some part of the frame --

14 A. I got to touch it, that's the only way I
15 can get down, unless I jump from the top bunk to the
16 floor. I got to use his bed frame. If I come down
17 on his mattress, I'll wake him up. When the mattress
18 is on the bed, ~~you got~~ ^{The frame} about two, three inches wider
19 than the mattress.

20 Q. Of frame?

21 A. Yes.

22 Q. What happened? You're lowering yourself
23 down. Did your foot touch the frame?

24 A. Touch ~~my~~ ^{The} frame. I had my socks on, and my
25 foot slipped. When I tried to come down, my foot

Benjamin Heyward - September 19, 2014

1 slip.

2 Q. Your foot slipped off the frame?

3 A. Yes, sir.

4 Q. Which foot?

5 A. The left foot.

6 Q. When the left foot slip, did you fall all
7 the way down?

8 A. All the way down.

9 Q. What did you fall on?

10 A. My hand. My hand.

11 Q. You caught yourself with your hand?

12 A. Yeah, so my face won't hit the floor.

13 Q. Were you (indicating)?

14 A. My hand in front of me.

15 Q. You sort of flipped forward?

16 A. Yes, sir, that's what I did.

17 Q. How did your knee get injured? What did
18 you hit your knee on?

19 A. On the floor.

20 Q. Both knees or just your right knee?

21 A. Just my right knee.

22 Q. That's what caused the injury?

23 A. Yes, sir.

24 Q. You were in there for three days on the
25 top bunk?

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SIGNATURE OF DEPONENT

DEPONENT: BENJAMIN HEYWARD
DEPOSITION DATE: September 19, 2014
REPORTER: LORA L. MCDANIEL
CASE CAPTION: Benjamin Heyward v. SCDC

(Please return both Signature of Deponent pages.)

I, the undersigned, BENJAMIN HEYWARD, do hereby certify that I have read the foregoing deposition and find it to be a true and accurate transcription of my testimony, with the following corrections, if any:

PAGE	LINE	CHANGE	REASON
20	1	name	wrong name
20	7	Corrected	left out
20	13	word	wrong words
21	14	-	
22	1		
23	22		
23	24		
24	2		
24	18		
24	24		