

Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

RECEIVED

- Mr.
- Mrs.
- Ms.
- Miss

Harry Surbur, #089794, Claimant

vs.

State of Arkansas, Respondent

Do Not Write in These Spaces		
Claim No.	14-0877-CC	
Date Filed	May 19, 2014	(Month) (Day) (Year)
Amount of Claim \$	12499.00	
Fund	DOC	

Failure to Follow Procedure,
COMPLAINT Negligence, Personal Injury

Harry Surbur, #089794, the above named Claimant, of POB 180, Brickeys, AR 72320
(Name) (Street or R.F.D. & No.) (City)
ARK. 72320 N/A County of LEE represented by PRO SE.
(State) (Zip Code) (Daytime Phone No.) (Legal Counsel, if any, for Claim)
of P.O. BOX 180 Brickeys ARK. 72320 N/A N/A says:
(Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.)
State agency involved: A.D.C. (E.A.R.U.) Brickeys Amount sought: \$12,499.00

Month, day, year and place of incident or service: June 20th, 2013 at East ARK. Regional Unit, in the Isolation 2, cell 58

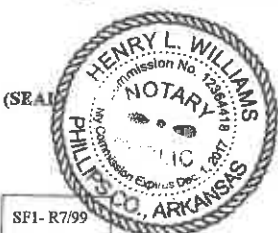
Explanation: On 6-20-13 at the E.A.R.U. (Brickeys Unit) in Isolation 2, Cell 58. Being housed with inmate Daniel B. Hurlbut #AD #658898. I was assaulted by inmate Hurlbut 658898 when I was placed in Handcuffs & inmate Hurlbut was not. Sgt. Lanah C.D. II Greenville were the two officers involved & fail to place inmate Hurlbut 658898 in handcuffs & that is a violation of A.D.C. Policy. When they fail to put him in handcuffs, I was assaulted & I could not do anything to protect myself, nor did the Correctional Officer do anything to prevent this assault. Sgt. Lane the supervisor at that time fail to follow Rules, Regulations, Procedures & Protocols that is set forth by A.D.C., Sgt. Lane used a Chemical Agent on my face, neck & back of my head as I was on the ground & inmate Hurlbut 658898 was kicking me. These two officers violate A.D.C. Policy Administrative Regulation 225, Employee Conducted Standards, 404 Transporting/escorting Offenders & 410 Use of Chemical Agents & Other Non-lethal Weapons. And I have the documentation & the Evidence to support my facts. Other Employees & Officers involved with this incident is: Warden Burl, Warden Ball, Warden Mills, Capt. McNamey, Lt. Burnett, Lt. Dean Sgt. Williams, Sgt. Hill, C.D. II Mr. Hill, Mental Health Counselor Futrell, Sgt. Ms. Mills & some Nurse, whose Name the Medical Dept. will not give me. Which I will explain how all individuals are involved in this incident on another piece of paper. Being that this issue is too complex to explain to many individuals are involved. I also need to include Sgt. Gram, Sgt. Willie Woodard, I have Exhibits: A, B, C, D, E, F - Through - E8, F1 - Through F3, G1 - Through G2, H1 - Through - H3. I need to include Chief Deputy/Deputy/Assistant Director LARRY May & Ray Hobbs Director

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof?
YES ; when? JUNE 23 2013 ; to whom? EARU, Brickeys, Filed A Resolution,
(Yes/No) (Month) (Day) (Year) (Department)

and that the following action was taken thereon: Warden Mills, Said my complaint had MERIT and CORRECTIVE Action will be Taken
and that \$ N/A was paid thereon: (2) Has any third person or corporation an interest in this claim? YES ; if so, state name and address
LARRY May Deputy Director P.O. BOX 8707 Pine Bluff ARK. 71611
(Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)
and that the nature thereof is as follows: LARRY May Deputy Director AGREED with Warden Mills and also stated that my Complaint had Merit
and was acquired on December 9th, 2013, in the following manner:
ANSWER to My Appeal, which also had merit.

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true.

HARRY SURBUR #089794
(Print Claimant/Representative Name) (Signature of Claimant/Representative)



SWORN TO and subscribed before me at Brickeys AR
(City) (State)
on this 20th day of April, 2014
(Date) (Month) (Year)
Henry L. Williams
(Notary Public)
My Commission Expires: 1 Dec 01 2017
(Month) (Day) (Year)

SF1- R7/99

B

UNIT LEVEL GRIEVANCE FORM (Attachment I) GRIEVANCE/RECEIVED

Unit/Center EARU

JUN 24 2013

Name H. Surber

FOR OFFICE USE ONLY

GRV. # EAM13-01981

Date Received: 6-24-13

GRV. Code #: 803

ADC# 89794 Brks # max 8-39 Job Assignment N/A EAST AR REGIONAL UNIT

6-24-13 (Date) STEP ONE: Informal Resolution

* 6-29-13 (Date) STEP TWO: Formal Grievance (All complaints/concerns should first be handled informally.)

Exhibit B ↑

If the issue was not resolved during Step One, state why:

Issue NOT Resolved.

(Date) EMERGENCY GRIEVANCE (An emergency situation is one in which you may be subject to a substantial risk of physical harm; emergency grievances are not for ordinary problems that are not of a serious nature). If you marked yes, give this completed form to the designated problem-solving staff, who will sign the attached emergency receipt. If an Emergency, state why:

Is this Grievance concerning Medical or Mental Health Services? NO If yes, circle one: medical or mental BRIEFLY state your one complaint/concern and be specific as to the complaint, date, place, name of personnel involved and how you were affected. (Please Print): on June 20th, 2013, Appx. 9:30 PM,

I was placed in Handcuffs By Sgt. LANE & my cellie was NOT. D. Hurlbut #658898, My cellie appeared to be asleep at this Time. He jumped up from a sleeping after I was in Handcuffs & started Beating on me & assaulting me. By Hitting me with a closed fist & Kicking me after I Felled to the cell Floor. C.O. Blackwell & SGT. Lane failed to Handcuff inmate Hurlbut & Because of that I was attacked & I could not defend my. These two Officers know that this is a Violation of Policy. This Happened in Isolation 2 cell 58. This is a max. security unit But I was not protected By the officers, Why, did I have to undergo the attack By inmate Hurlbut #658898.

H. Surber 89794

6-29-13

Inmate Signature

Date

If you are harmed/threatened because of your use of the grievance process, report it immediately to the Warden or designee.

THIS SECTION TO BE FILLED OUT BY STAFF ONLY

This form was received on 6/23 (date), and determined to be Step One and/or an Emergency Grievance (Yes or No) This form was forwarded to medical or mental health? (Yes or No). If yes, name of the person in that department receiving this form:

P. Hill 1266 P Hill 6/23/13
PRINT STAFF NAME (PROBLEM SOLVER) ID Number Staff Signature Date Received

Describe action taken to resolve complaint, including dates: This matter is currently being investigated.

P Hill 6/23/13 H. Surber 6-23-13
Staff Signature & Date Returned Inmate Signature & Date Received

This form was received on 6/24/13 (date), pursuant to Step Two. Is it an Emergency? (Yes or No).

Staff Who Received Step Two Grievance: Sgt Hill Date: 6/24/13

Action Taken: (Forwarded to Grievance Officer/Warden/Other) Date: 6/24/13

If forwarded, provide name of person receiving this form: Date:

DISTRIBUTION: YELLOW & PINK - Inmate Receipts; BLUE-Grievance Officer; ORIGINAL-Given back to Inmate After Completion of Step One and Step Two.

* EXHIBIT B. *

C

WARDEN'S OFFICE

IGTT410
3GS

AUG 20 2013

Attachment III

INMATE NAME: Surber, Harry E.

ADC #: 0897948

East Arkansas Regional Unit

GRIEVANCE #: EAM13-01981

WARDEN/CENTER SUPERVISOR'S DECISION

Inmate Surber, you grieve on June 20, 2013 Sgt. Lang and Officer Granville failed to protect you by not placed handcuff on your cellmate who assaulted you. Your complaint is noted. Documentation reveals procedure was not security protocol. Therefore, your complaint is with merit and corrective action will be taken.

Dave Mills / DDD MTH
Signature of Warden/Supervisor or Designee

Dg Warden
Title

8/16/13
Date

INMATE'S APPEAL

If you are not satisfied with this response, you may appeal this decision within five working days by filling in the information requested below and mailing it to the appropriate Chief Deputy/Deputy/Assistant Director along with the Unit Level Grievance Form. Keep in mind that you are appealing the decision to the original grievance. Do not list additional issues, which are not part of your original grievance as they will not be addressed. Your appeal statement is limited to what you write in the space provided below.

WHY DO YOU DISAGREE WITH THE ABOVE RESPONSE?



Inmate Signature

ADC#

Date

Exhibit D

IGTT430
3GD

Attachment VI

INMATE NAME: Surber, Harry E.

ADC #: 089794

GRIEVANCE#: EAM13-01981

CHIEF DEPUTY/DEPUTY/ASSISTANT DIRECTOR'S DECISION

Your complaint is on 6/ 20/ 2013, while being removed your cell you were placed in handcuffs by Sgt. Lane which allowed your cellmate D. Hulburt #658898 who was not in handcuffs and appeared to be asleep assault you by hitting you with a closed fist and kicking you. You claim Sgt. Lang and Officer Granville failed to protect you by not placing handcuffs on your cellmate.

After reviewing your appeal and all supporting documentation, I concur with the Warden's response in which he states in part, " Documentation reveals procedure was not security protocol. Therefore, your complaint is with merit and corrective action will be taken."

Appeal denied

By way of this response, I will instruct the unit Warden to forward a copy of corrective actions taken to my office.

17 M7

Director

Date

12-9-13

Affidavit

E - 1

The incident in question: On June 20th., 2013, I Harry Surber #089794 was housed with a mentality unstable & very emotional & unpredictable inmate name Daniel Hurlbut #658898. On this day, June 20th., 2013 at approximately 10:30 A.M. Ms. Futrell the Mental Health Counselor was making her rounds in Isolation 2 & checking in on the inmates & there well being. Inmate Hurlbut at this time express to Ms. Futrell that he was having a lot of trouble with the guards & controlling himself & inmate Hurlbut made numerous statements at this time to Ms. Futrell & the officer who was escorting her, that he might harm himself & / or someone else. Ms. Futrell made a note of this & told the officer who was escorting her to bring inmate Hurlbut to the Mental Health Dept. as soon as possible, that she wanted to talk with him today (June 20th., 2013), But to no avail. Inmate Hurlbut & myself (Harry Surber #089794) tried numerous times to get Sgt. Willie Woodard, Sgt. Gram & Capt. Wallace McNary to take inmate Hurlbut to see & talk to the Mental Health Counselors, But was told ~~by~~ ^{by} the Correctional Officers that inmate Hurlbut could wait & he is not that important & whatever is troubling him to deal with it himself.

After shift change & Mail was delivered, which inmate Hurlbut received a letter, He read his letter & he seemed very emotional & he went & layed down & went to sleep. At approximately 9:30 P.M. Sgt. Lane & C.O. # Granville came to my

E-2

cell & stated that I was being moved to another cell block & to get ready. Sgt. Lane & C.O. II Granville made several attempt to wake inmate Hurlbut up To Be & place him in handcuffs, But to no avail. This is when Sgt. Lane (the Isolation 2 Supervisor) made the decision to ignore protocol & Place me in handcuffs. Because of Sgt. Lane decision to ignore the Rules, Regulations, Steps & Procedures, I was assaulted in handcuffs, because of this. After I was place in handcuffs, inmate Hurlbut jumped up & started assaulting me, by Hitting me with a closed fist, I felled to the ground & that is when he started kicking me in the head several times. At this point of the attack I lost consciousness. When I came to I had a burning ~~feeling~~^{sting} feeling in my Right Eye. Later I found out that Sgt. Lane used a Chemical Agent on me. When I did regain consciousness I felt someone pulling on me & That was C.O. II Granville who pulled me out of the cell & slammed the door behind me, leaving Hurlbut in ^{the} cell by himself. C.O. II Granville helped me to my feet & escorted me to the Isolation 2, Dayroom. Where I awaited medical attention. By this time Lt. Burnett & Sgt. Williams showed up to deal with the situation. A short time later the nurse showed up (Whoes Name I

E-3

do not know, NOR will the infirmary (medical Dept.) give me her name. I was told by them that I will have to have a court order before they will help me, on any. The nurse took some note, written something down, told the Officers to take me to the infirmary But to NO avail. After waiting in the dayroom for nearly two (2) hours was the chemical agent on me, I was escorted to cellblock 8, cell 39. When C.O. II MR. Hill came to my cell door, I told him what had happen & that I am covered in a chemical agent & my eye is on fire, C.O. III MR. Hill said, hold on he needs to contact his supervisor, short time later, C.O. II MR. Hill stated that he has been given a direct order from Sgt. Lane, "NOT to let me out of my cell & do not give me a shower." So I went to the sink in my cell & tried my best to get the chemical agent out ~~of~~ of my eye & off my Face, Back, & Neck the Best I could, which really did not help.

The next day (June 21st, 2013) when Ms. Futrell, mental Health Counselor was making her rounds, I stop her & told her everything that happened all the way to this point. Ms. Futrell wrote all this down & said she was going to contact someone immediately, & she did. Around 3:00 p.m.

E-4

On June 21st, 2013, Sgt. Ms. Mills came to my cell (max. 8 cell 39) & ask if I want to take a show to get the chemical agent off of me. I told her YES, & was given a shower immediately. After showering, Sgt. Ms. Mills ask me several questions about incident that took place the night before, & I told her everything that happened to me. She instructed me "file a grievance", so I did. And that was on the 23rd. of June, 2013, Sgt. Ms. Hill & Lt. Dean, had me escorted to the Office where Lt. Dean & Sgt. Ms. Hill started questioning me about what happened on the night of the 20th., of June 2013, I told Both of them everything that happened & Sgt. Ms. Hill & Lt. Dean immediately started an investigation. I filled out the step Two of my grievance & Sgt. Hill signed it & Handed it to Lt. Dean. I was escorted back to my cell. That night I started getting major migraines. these headache are so bad that they make me sick to my stomach, Blur my vision & these migraines have not stop since the attack.

These are the policies that was violated.

(1): Administrative Regulations (AR.) 404

AR. 404 Transporting/Escorting Offenders:

III. on page (1) one: states in part that security personnel are required to restrain any &/or all inmates in the ~~the~~ E.A.R.U. maximum security unit when escorting &/or transporting offenders. This is mandatory as part of security personnel performance of their duties;

IV. C, page (1) one: Restraints: states in part that restraints will be used as security equipment to prevent assaults, & to protect employees, & offenders, & others. This is the V. the policy of the AR. 404 Transporting/Escorting offenders to ensure secure procedures & safety precautions while escorting &/or transporting offenders at all times.

VI. Procedures: All security personnel will use proper security procedures & safety precautions when escorting/transporting offenders at all times including while being escorted &/or transported on the Unit.

VI. B, Page (2) Two: Use of Restraints

#1. All offenders being transported of one unit/center to another or (from point A. to, point B.) must be handcuffed, no exception.

* Exhibit E-6 ..

#B.2., Page (3) Three, Handcuffs &/or other security restraint devices are not to be removed until the offender is delivered to the receiving authority &/or the offenders destination, End of Policy AR. 404, Transporting/escorting offenders.

Administrative Regulations (AR.) 410 Use of Chemical Agents & Other Non-Lethal Weapons

I. Page (1) one; Policy: It states in part that the use of chemical agents & other non-lethal weapons against an inmate be undertaken with minimum amount of force. Only when the inmate threatens bodily harm to himself/herself, other inmates, or individuals, will not produce an item(s), or will not relocate, may chemical agents or other non-lethal weapons issued by the Department be employed.

II. D. page (1) one; Explanation: states that precautionary measures will be taken to limit side effect or physical damage due to the use of chemical agents, & the following procedures will be followed whenever any chemical agent(s) are used.

II. 1. Chemical Agents D., States that the (on page 2) inmate will be instructed by staff personnel to flush his eyes & any skin exposed to the chemical agent with water. If the inmate appears incapable of doing so, a member

of the medical staff may be called upon to perform this task. If no member of the medical staff is available, a staff personnel may undertake this procedure.

2. A., on page (2) two: Other Non-Lethal weapons; States in part, That security personnel using other non-Lethal weapons will try to ensure that an inmate will not be injured.

2. C., on page (2) two: Departmental S.O.P., Standard Operating Procedures, states, in part that the necessary training will be concluded before issued &/or used.

2. E. Incident Report: states in part, that staff personnel involved will immediately after the use of chemical agent will report(s) in detailed, noting the amount of chemical agent utilized.

2. F. Examining Incident Reports. States in part that the warden(s) will examine these incident reports to ensure that proper procedures were followed, & that no discrepancy exists regarding the handling of the situation depicted, & Failure to follow proper procedures may result in disciplinary action.

E-8

with all this said & done I will show with my evidence that security personnel (Sgt. Lane) Violated these policies & failed to protect me from an assault by inmate Hurlbut #658898, That the physical Violents I indooored has caused me to suffer from major Migraines headaches. & That Rules Regulations, Procedures & Protocol was Violated, And that My Claim is with Merit.

The events I described in this statement & the numerous violations are VERY TRUE, & I swear under the acted of PERJURY that the following events happened to the best of my knowledge so help me GOD, End of statement. #8. E.O.S.

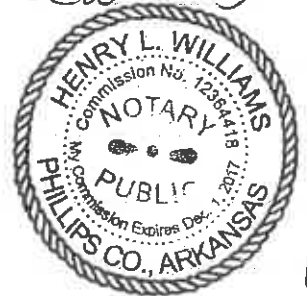
HARRY SURBER #089794,
Claimant

Harry Surber

signature of Claimant +
April, 20th. 2014

Comm Exp: Dec 1, 2017

Henry Williams
4-30-14





ADMINISTRATIVE REGULATIONS

STATE OF ARKANSAS

BOARD OF CORRECTIONS

Section Number:
DOC 404
DCP 4.5

Page Number:
1 of 3

Board Approval Date:

2/17/94

Supersedes:
DOC 404
DCP 4.5 Emerg.

Dated:
2/27/92
1/19/94

Reference:

Effective Date:
3/10/94

SUBJECT: Transporting/Escorting Offenders

I. AUTHORITY:

The authority of the Board of Correction and Community Punishment to promulgate this Administrative Regulation is confirmed in Act 50 of 1968, First Extraordinary Session, as amended; Act 548 and 549 of 1993 (Ark. Code Ann. ss 16-93-1203 and 12-27-105 of 1993).

II. PURPOSE:

To describe policies and procedures used by the Department of Correction/Community Punishment when supervising offenders who require escorted transportation outside the units/centers.

III. APPLICABILITY:



Wardens/center supervisors; security personnel; any employees required to restrain, escort, and/or transport offenders in the performance of their duties; and offenders.

IV. DEFINITIONS:

A. Employees: Persons hired by the Department of Correction/Community Punishment or contracted for services.

B. Offenders: Persons sentenced to the Department of Correction or persons sentenced to the Department of Correction for judicial transfer to the Department of Community Punishment and persons confined within a community punishment center as a condition of probation, suspended imposition of sentence or post prison transfer, or, if appropriate, under the supervision of the Department of Community Punishment.



C. Restraints: Security equipment used to prevent escape, assault, or the commission of some other offense by violent or disruptive offender(s); and to protect employees, offenders, and other individuals.

V. POLICY:

X It shall be the policy of the Department of Correction/Community Punishment to ensure secure procedures and safety precautions while escorting and/or transporting offenders at all times.

VI. PROCEDURES:

A. Situations

Department employees will use proper security procedures and safety precautions when escorting and/or transporting offenders at all times including but not limited to the following:

- X 1. while being escorted and/or transported on the unit/center;
- 2. transfer from one unit/center to another;
- 3. while being accompanied on out to court status;
- 4. while on off-the-unit/center activities;
- 5. for offenders being returned to a unit/center following escape, parole violations, or other apprehension return situations; and/or
- 6. for any reason offenders must be escorted, transported, or held for the good order and safety of the Department of Correction/Community Punishment.

B. Use of Restraints

- X 1. All offenders being transported from one unit/center to another or being taken from and returned to a unit/center must be handcuffed. A security belt and/or leg irons may also be used to provide additional security. They may also be used while escorting offenders if used for the good order and security of the department. Exceptions to this policy may include:
 - a. Offenders in the least restrictive class to include I-A and I-B;
 - b. inmates being transported to a work release unit/center;
 - c. inmates being transported to and from an industry or construction job assignment;
 - d. inmates participating in the Regional Maintenance Program or community work program;
 - e. inmates participating in the Plasma Program;
 - f. inmates being transported to and from band or choir engagements; and,
 - g. inmates being transported to and from offender panel engagements.

- * 2. Handcuffs and/or other security restraint devices employed are not to be removed until the offender is delivered to the receiving authority as specified by the unit warden/center supervisor.

C. Number of Escorts and Weapons while Transporting Offenders

- 1. Normally, two employees shall be assigned to escort offenders in transfer, with at least one employee being armed. Exceptions may be made by the unit warden/center supervisor to increase this security escort policy. Employees accompanying offenders must be extremely alert, especially in crowds, to guard against escape and/or the acquisition or use of any type weapon by the offender.
- 2. At least one escorting employee must be female when transporting a female offender.

D. Escort Instructions

- 1. Escorting employees shall be provided with a copy of the first page of the admission summary and a gate pass or transfer. Exceptions: Emergency medical transfers will be handled with gate passes only.
- 2. When accompanying offenders to court, employees are to contact the sheriff or bailiff, chief of police, or U.S. Marshal as soon as they arrive and receive orders for subsequent proceedings.
- 3. Should the judge order the offender remanded to a jail to await further action, escorting employees are to obtain a copy of the Court Order, if possible. Before turning an offender over to officials, one of the escorting employees will make either telephone or radio contact with the unit warden/center supervisor for instructions. Employees will secure a receipt from the sheriff, chief of police or U.S. Marshal when the offender is turned over to them.
- 4. If overnight travel is necessary, it is permissible for the escorting employees to spend the night in a city or town where the offender may be confined to a secure jail. Upon release from such temporary confinement, the offender shall be thoroughly searched for contraband by Department employees.

Offenders being accompanied on off the unit/center trips are not permitted visits, except for attorney/client consultations on order of the court or as approved by the warden/center supervisor.

VII. REFERENCES:

ACA Standards 3-4182; 3-4183

AR404



ADMINISTRATIVE REGULATIONS

STATE OF ARKANSAS

BOARD OF CORRECTIONS

Section Number:

410

Page Number:

1 of 2

Board Approval Date:

8/23/89

Supersedes:
AR 410

Dated:
11/30/79

Reference:

Effective Date:
8/25/89

SUBJECT: Use of Chemical Agents and Other Non-Lethal Weapons

I. POLICY:



It shall be the policy of the Department of Correction to ensure that the use of chemical agents and other non-lethal weapons against an inmate be undertaken with a minimum amount of force. Only when the inmate threatens bodily harm to himself/herself, other inmates, or individuals, will not produce an item(s), or will not relocate, may chemical agents or other non-lethal weapons issued by the Department be employed.

II. EXPLANATION:

A. Definitions

1. Chemical agents will include different types of tear gas, pepper fogger, smoke screen mace, and other chemicals approved for use by the Director.
2. Other non-lethal weapons will include batons, stun type devices and other non-lethal weapons approved for use by the Director.

B. Prior to the use of any chemical agent/other non-lethal weapon (stun type devices), the inmate shall be informed that such will be used unless he/she complies with an order(s).

C. The use of any chemical agent(s) /other non-lethal weapons may be authorized only by a unit Warden/Center Supervisor or his/her designee.



D. Precautionary measures shall be taken to limit side effects or physical damage due to the use of chemical agents or other non-lethal weapons consistent with the guidelines of AR 409. In addition, the following procedures shall be followed whenever any chemical agent(s)/other non-lethal weapon is used.

1. Chemical Agents

- a. If circumstances allow, ventilation devices, such as windows and fans, shall be readied prior to the use of any chemical agent(s). In any event, these devices shall be employed immediately after any chemical agent(s) is used. The purpose of this procedure is to minimize the effect of any chemical agent(s) upon other inmates and employees located in the immediate vicinity.
- b. Gas masks shall be available for use by staff personnel at the time the chemical agent is used.
- c. Correctional officers shall enter the area as soon as practical to remove an inmate when a chemical agent(s) has been used.
- d. The inmate shall be instructed by staff personnel to flush his/her eyes and any skin exposed to the chemical agent with water. If the inmate appears incapable of doing so, a member of the medical staff may be called upon to perform this task. If no member of the medical staff is available, a staff personnel may undertake this procedure.

2. Other Non-Lethal Weapons

- * a. If circumstances allow, personnel using other non-lethal weapons will try to ensure that an inmate will not be injured.
- b. Correctional officers shall enter the area immediately after the inmate has been immobilized. At that time the inmate is to be handcuffed and is to be seen by medical staff. If no member of the medical staff is immediately available, other trained staff will ensure that the inmate has no medical emergency.
- * c. A departmental SOP will be developed for non-lethal weapon(s) to be used and necessary training will be concluded before any type of non-lethal weapon is issued for use.

* E. An incident report shall be prepared by all staff personnel involved immediately after the use of a chemical agent or other non-lethal weapons. The report(s) should be detailed, noting the amount of chemical agent utilized or type and charge of stun device.

* F. The Unit Warden/Center Supervisor shall examine these incident reports to ensure that proper procedures were employed and that no discrepancy exists regarding the handling of the situation depicted. Failure to follow proper procedures may result in disciplinary action. Refer to Administrative Regulation 005.

G. Only chemical agents or non-lethal weapons authorized and issued by the Arkansas Department of Correction will be used by any employee against an inmate during a confrontation described by this Administrative Regulation.

Exhibit H-1

Violations That Are Pertinent To Policy Sections,

- (1) That security personnel (Sgt. Lane) did in fact violate Administration Regulations (AR. 404 Transporting/Escorting Offenders, By ignoring protocol.
- (2) Sgt. Lane, was the highest ranking officer on the scene at the time of the assault took place & he was the supervisor for Isolation Two where the assault happened.
- (3) Sgt. Lane's decision to ignore the rules & regulations that are put in place to protect me, resulted in a physical assault by inmate Daniel B. Hurlbut #658898 on inmate Harry Surber #89794.
- (4) Sgt. Lane failed to follow policy (AR. 404) by not placing inmate Daniel B. Hurlbut #658898 in handcuffs, when attempting to take inmate Harry Surber #89794 out of cell 58, in isolation two, at approximately 9:30 pm.
- (5) Because of this, inmate Harry Surber #89794, was physically attacked, by inmate Daniel B. Hurlbut #658898, with a closed fist & numerous kicks to the head.

- (6) Sgt. Lane, Violated Administrative Regulations, AR. 410 Chemical Agents & Other Non-Lethal Weapons, By giving C.O. II Mr. Hill (The Correctional Officer) who was assigned to the maximum security unit, cell block (8.) A direct order, "Do Not give inmate Harry Surber #89794, a shower." After I was sprayed with a chemical agent during the attack. Policy states in part that an inmate will be afforded the opportunity to thoroughly wash the chemical agent off one's body, to limit any side effects.
- (7) Sgt. Lane, ignored Precautionary measures By using his Rank in order to hide the violations.
- (8) Sgt. Lane's actions were very unprofessional, Administration Regulations (AR. 225 & AD. 10-19) Administration Directives, The Employee Conduct Standards, State's in part that Professionalism & Safety is the first two things that are mandatory & should always be on the Correctional Officer's mind, & be present all times, which Sgt. Lane **IGNORED** on June 20th, 2013.
- (9) Sgt. Lane & C.O. II Granville Knows that All inmates assigned to the maximum security Unit

will Be Hand cuffed in isolation, when that inmate is being moved in &/or out of a cell. Both of these officers have worked in the maximum security unit for sometime now. And Both officers were trained accordingly to the requirements of AR, Dept. Corrections. And By them NOT Keeping with the policies that are ~~set~~ ^{#8} set forth, they fail to protect me.

(10) Sgt. Lane nor C.O. # Granville, nor any other correctional officer, nor the medical staff instructed me (Harry Surber #89794) to "flush" my exposed skin & eye with water. Which is a violation of the AR. 410

(11) Sgt. Lane, The Supervisor in charge that night, failed to Report this incident immediately afterwards, ~~and~~ ^{#8} subsequently Lt. Dean & his inquiry let me know this because there was no Report filed By Sgt. Lane nor Lt. Burnett at that time.

The described incidents in this Inventory Sheets are very true & I swear under the act of Perjury that the following statement of ~~the~~ ^{#8} events took place & that this is to the Best of my knowledge. So help me GOD. Harry Surber E.O.S.

Motion To Compel
Respondent To Move
Forward With This
Case #14-0877-cc

1 of 2 Pages of
Motion Filed
Arkansas Claims Commission

AUG 29 2014

RECEIVED

Case No. #14-0877-cc

MR. HARRY SURBER, #089794, Claimant
VS.

Dept. of Corrections, Respondent

Come Now the Claimant Harry Surber #089794, and for it's
Motion To Compel the Respondent to move forward with this Case No.
#14-0877-CC and states the following:

- 1: I want to file a cause of action under A R C P 12(B)(6)
and the Respondent should be force to move FORWARD with
this case.
- 2: That the Respondent takes full Liability and Responsibility
for there negligence, and the lack of proper attention and
carelessness to all ARK. Dept. of Corrections policies, step, procedures
and Protocol.
- 3: The Respondent Knows that this case (#14-0877-cc) is favorable
for the Claimant and is trying to prolong this case as long as
the Respondent can.
- 4: I am asking that the State Claims Commission Rule in
my favor? Were Both Parties can get on with there life's.
5. Claimant is asking that matter (The Hearing) (The Opinion-
of the Claims Commission Committee) (The Finding of Facts) (All
Supporting Documents/Evidence) and any (Testimony) Be
Brought forward immediately to get this case over with
once and for all.

6: The Claimant will prove that the Dept. of Corrections is liable and that I am entitled to the full amount of Compensation that I am asking for, \$12,499.

Arkansas Claims Commission

AUG 29 2014

7: That the Dept. of Corrections take corrective action against all personnel that was involved with this Claims, and Violated Policies, Steps, Procedures and Protocol.

8: I further swear that the Claimant alleges that everything mention, stated, contained and/or ask for in this motion is true and accurate to the Best of my knowledge, information and belief.

Aug. 26th. 2014
Date

Harry Swoboda
Affiant

Social Security #

Subscribed & sworn to before me, a notary public, on this 26th day of August 2014.

Henry L. Williams
Notary Public

My Commission Expires: Dec 1, 2017



Before the AR. State Claim Commission

RECEIVED

HARRY SURBER (#089794)

claimant

VS. NO. 14-0877-CC

AR. Dept. of Correction

Respondent

Request for Discovery

Come Now the Claimant is seeking and asking for a Motion of Request for Discovery:

1. That the Respondent sends the Claimant All Witness Statements, 005's, incident Reports, other notations, including daily Logs, Reports and other documents; Any and every medical Records generated by the Claimant Between 18th, June 2013 and the 20th, August 2014, and will include, But not limited to, the nursing notes, physicians notes, treatments Triage assessment, any diagnostic's, Exams, and it's interpretations, Lab work, notes, notations of personal observations, professional observations and every other medical document in the aforementioned time frame. The sign in log & out Log for the East AR. Regional Unit, Maximum Security Administration Segregation Unit Isolation Two (2) for the time period of between 20th, June 2013 and 21st, July 2013 every daily log entry 23

made for the East AR Regional Unit, Maximum security Administration Segregation Unit Isolation Two (2) for the time period of between the 20th. of June 2013 and the 21st. of July 2013 and; every note, Log, document, Recording, statements (written or otherwise) or observations, tangible or not, made by any staff member of the A.D.C., mental Health Personal, Medical Personal, and/or witnesses in reference to this incident including A.D.C. and/or C.C.S. administrators; Internal Affairs document will be included.

Wherefore, for the reason above the Claimant prays that the Claim Commission makes the Respondent's acted immediately to these Request for Discovery without any delays.

Sept. 18th., 2014

Respectfully Submitted,
Claimant, Harry Surber #89794
Harry Surber

Subscribed & Sworn to before me, A notary public, on this 18th. day of Sept., 2014

Geneva V. Jones

Notary Public

1-10-2015

GENEVA V. JONES
NOTARY PUBLIC-STATE OF ARKANSAS
LEE COUNTY
My Commission Expires 01-10-2015

My Commission Expires:

Before the AR. State Claims Commission

HARRY Surber #89794 Claimant

vs. NO-14-0877-CC

AR. Dept. of Correction Respondent

RECEIVED

Reply to Respondent's Response

Come Now the Claimant, HARRY Surber #89794,
and for its Response to the Respondent's
Motion as follows:

Proceeding Pro se by necessity with
this Reply to Respondent's Response:

That the Respondent's (AR. Dept. of Correction)

have stated in their Response to Motion
for Summary Judgment.

The Following; "Respondent (A.D.C.) states
that there IS A Genuine Issue of
material Fact."

And a trial is NECESSARY; HARRY Surber #89794
Subscribed & Sworn to before me A notary public on this 18 day of
Sept. 2014.

Geneva V. Jones
Notary Public

GENEVA V. JONES
NOTARY PUBLIC STATE OF ARKANSAS
LEE COUNTY
My Commission Expires 01-10-2015

My Commission Expires: 1-10-2015

AR. State Claims Commission Sept. 3rd, 2014

HARRY SURBER #089794 (Claimant)

VS. NO. 14-0877-CC

AR. Dept. Correction (Respondant)

Arkansas
State Claims Commission
SEP 12 2014

RECEIVED

Motion(s)

Come now the Claimant, for the motion of this Claim to be presented in front of the AR. State Claims Commission Committee.

1: That this motion be treated as one for Summary Judgment.

2: That the Respondent, (AR. Dept. of Correction) has had ample amount of time to do an thorough investigation. Which has been done already.

3: That the Claimant, Harry Surber - #089794 has a overwhelming and bundance of evidences. That I have already provided the Respondent's with, To Prove that my allegations are true and correct.

4: That Claimant be given the chance to appear in front of the Claims Commission. That this appearance is paramount to this case, (NO. 14-0877-CC) And that strong consideration needs to be made.

5: That the Claims Commission makes the Respondent's fully liable for there actions and moves this case, (NO. 14-0877-CC) forward, So the Claims Commission can, and will make the final Decision.

6: That the Claims Commission makes the Respondent's, Responed immediately to these motion(s) without delay.

Respectfully Submitted, Claimant,
HARRY SURBER #089794
Harry Surber

Certificate of Service

I certify that a copy of this Motion(s) has been served this 3rd day of September 2014 on the Respondent by placing a copy of the same in the U. S. mail, Regular Postage to:

Respondent,
AR. Dept. of Correction % Lisa Mills Wilkins
101 E. Capitol AVE., Suite 410
Little Rock, AR. 72201-3823

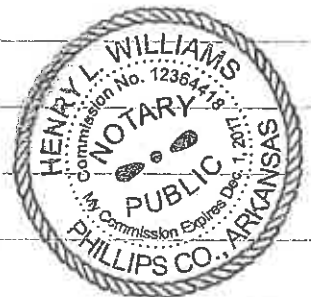
I further Swear that the Statements, matters and things contained herein are true and accurate to the best of my Knowledge, Information and belief.

September 2014 Harry Surber #89794
Date HARRY SURBER #89794

Subscribed and Sworn to Before me,
A Notary Public, on this 3rd day of
September, 2014

Henry L. Williams
Notary Public

My Commission Expires: Dec 1, 2017



BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

Arkansas
State Claims Com.
SEP 16 2014

HARRY SURBUR (ADC #089794)

CLAIMANT RECEIVED

V.

NO. 14-0877-CC

ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT

RESPONSE TO MOTION FOR SUMMARY JUDGMENT

COMES NOW the Respondent, Arkansas Department of Correction, and for its Response to the Motion for Summary Judgment states as follows:

Under Arkansas Rules of Civil Procedure Rule 56, summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *See Williams v. Ark. Dep't of Corr.*, 362 Ark. 134, 207 S.W.3d 519 (2005) (abrogated on other grounds by *Grayson v. Ross*, 369 Ark. 241, 253 S.W.3d 428 (2007)); *Anselin v. Johnson Reg'l Med. Ctr.*, 375 Ark. 10, 289 S.W.3d 28 (2008).

Respondent states that there is a genuine issue of material fact.

For these reasons, the Respondent prays that the Motion for Summary Judgment be denied and for all other just and proper relief.

Respectfully submitted,

Department of Correction
Office of Counsel



LISA MILLS WILKINS Ark. Bar #87190
Attorney Supervisor
Post Office Box 8707
Pine Bluff, AR 71611
(870)267-6844 Office
(870)267-6373 Facsimile

CERTIFICATE OF SERVICE

I certify that a copy of the RESPONSE has been served this 15 day of September 2014, on the Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

JEREMY KENNEDY (ADC #093061)
Varner Unit
P. O. Box 600
Varner, AR 71644-0600


LISA MILLS WILKINS Ark. Bar #87190

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

HARRY SURBUR (ADC #089794)

Arkansas
State Claims Comm
SEP 16 2014
CLAIMANT
RECEIVED

V.

NO. 14-0877-CC

ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT

RESPONDENT'S MOTION TO DISMISS

COMES NOW the Respondent, Arkansas Department of Correction, and for its MOTION TO DISMISS, states and responds as follows:

1. Claimant alleges that on June 20, 2013, officers failed to follow policy, acted negligently and he suffered a personal injury when his cellmate Inmate Hurlbut was not cuffed simultaneously and attempted to assault him before Claimant was removed from the cell by the officers. He seeks \$12,499.00 in damages.
2. Claimant was being handcuffed at the cell door and Inmate Hurlbut was pretending to be asleep on his rack and refusing the officers direct orders to come to the cell doors to be cuffed so they could be escorted together. Officer Granville was next to Claimant and had cuffed him when Inmate Hurlbut jumped from his rack and ran toward Claimant flailing his arms. Claimant was not knocked to the ground. One officer states that Claimant was struck one or two times before Inmate Hurlbut was sprayed with OC spray and ran to the back of the cell. Claimant was removed from the cell and placed on the floor in the hall. He was seen by medical where no bleeding was observed, but he had a nickel sized bump on the back of his head which was treated with an ice pack.
3. During the investigation into the incident, Internal Affairs believe that the incident was staged due to finding a letter written by Claimant to Inmate Hurlbut's mother three (3) days later wherein Claimant is very complimentary of Inmate Hurlbut and tells his mother that Claimant only wants to help him and that he should not talk to the officers or anyone RIGHT NOW! See Exhibit "A"
4. Claimant was not seen by medical for any other treatment.
5. Claimant states that he was handcuffed and not allowed to defend himself from Inmate Hurlbut. If Claimant had defended himself, then he would have been written a disciplinary.
6. Claimant states that the officers did not protect him. Such is not the case, they immediately ordered Inmate Hurlbut to stop, sprayed him with OC spray and removed Claimant from the cell simultaneously. Officers acted quickly and appropriately.
7. Claimant has failed to state a cause of action for this claim under ARCP Rule 12(b)(6). Respondent prays that the claim be dismissed.

WHEREFORE, for the reasons stated above and the evidence submitted, the Claims filed must be dismissed.

Respectfully submitted,

Department of Correction
Office of Counsel


LISA MILLS WILKINS Ark. Bar #87190

Attorney Supervisor
Post Office Box 8707
Pine Bluff, AR 71611
(870)267-6844 Office
(870)267-6373 Facsimile

CERTIFICATE OF SERVICE

I certify that a copy of the above MOTION TO DISMISS has been served this 15 day of September, 2014, on the below Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

HARRY SURBUR (ADC #089794)
EAMU
P. O. Box 180
BRICKEYS, AR 72320-0180

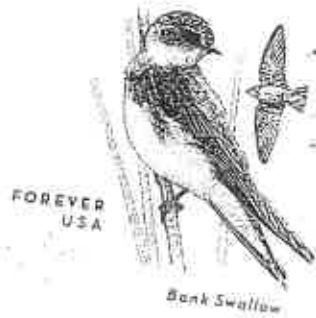

LISA MILLS WILKINS Ark. Bar #87190

89794

72320

original

Ms. Kelley
717 Callihan Cp.
Springdale, AR. 72762



ADC
Arkansas Department of Computer

Exhibit

A

32

Mrs.

Sunday

June 23rd, 2013

Dear Kelley Hurlbut,

I hope this letter finds you in the
best of health & spirit's.
I first want to say that your son Daneil
help me change my ways. I have never
seen much on GOD. NOR Have I ever
had someone who could help me understand
that GOD really loves me. And because
of that I speared Daneil's life. The Lt.
that wrote your son a Bogus Disciplinary
& tried to Hire me to kill him along with
two other "SGT's Woodard" A Father & son
who work at this unit also. But on Differet
shift. I need you to write Daneil & tell
him to stop talking to everyone (Officers)
they are not his friends & I would not
trust anyone right now! I swear
under oath & to GOD. That what I'm
telling you is the whole truth. Kelley
please call the F.B.I. & tell them what
I have told you. I will take a polygraph
test to show I am not lying. I am doing
2 years for Murder & you can check it
out. I am just trying to help Daneil that,
all! I don't care about anyone else!
I hope you Act now? And I pray that
your son is OK.
I write me Back & Let Sincery, Mr. Swibe 33

Arkansas
State Claims Commission
SEP 22 2014
RECEIVED

Before The AR. State Claims Commission

HARRY Surber # 89794 Claimant

VS. NO. 14-0877-CC

AR. Dept. of Correction Respondent

Response To Respondents Motion

Come Now the Claimant, HARRY Surber # 89794 &
FOR it's Response to the Respondent allegations.

Under A.R.C.P. Rule 56, summary judgment is
only appropriate when there is NO genuine issues
of material Fact.

The Respondent "Omits" and states that there is
a genuine issue of material Fact, By Respondent.

HS. ~~Respondent's~~ For this reason, The Claimant prays that the
Motion for summary judgment
Be Granted and for all other things that
the Claimant is Entitled Be Ruled in Claimant
favor, and proper relief Be granted.

Pursuant to 28 U.S.C 5174b, I declare under penalty of
Perjury that the foregoing is true & correct. Executed on
Sept. 19th, 2014

Respectfully Submitted, Claimant
MR. Harry Surber # 89794

STATE CLAIMS COMMISSION DOCKET
OPINION

Amount of Claim \$ 12,499.00

Claim No. 14-0877-CC

Harry Surbur, #089794
vs. Claimant

Attorneys
Pro se Claimant

Department of Correction
State of Arkansas Respondent

Lisa Wilkins, Attorney
Respondent

Date Filed May 19, 2014

Type of Claim Personal Injury, Failure to Follow
Procedure, Negligence

FINDING OF FACTS

The Claims Commission hereby unanimously grants the Respondent's "Motion to Dismiss," for reasons 1-6 set forth in the motion. Therefore, this claim is hereby unanimously denied and dismissed.

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

The Claims Commission hereby unanimously grants the Respondent's "Motion to Dismiss," for reasons 1-6 set forth in the motion. Therefore, this claim is hereby unanimously denied and dismissed.

Date of Hearing October 15, 2014

Date of Disposition October 15, 2014

[Signature]
Chairman
[Signature]
Commissioner
[Signature]
Commissioner

**Appeal of any final Claims Commission decision is only to the Arkansas General Assembly as provided by Act #33 of 1997 and as found in Arkansas Code Annotated §19-10-211.

Before The Arkansas General Assembly

Harry Surber

Appellant

Vs. no. 14-0877-CC

Arkansas Department of Corrections

Appellee

State Claims Commission

NOV 13 2014

RECEIVED
Appeal To The Arkansas General Assembly
From Arkansas Claims Commission Ruling

Comes now the Appellant,
Harry Surber, proceeding pro se by necessity, with
this Appeal before The Honorable Arkansas
General Assembly in the above styled claim.

The General Assembly is
respectfully directed to note, for the record, that yet
again the Arkansas Claims Commission has met
behind closed doors without affording the Claimant
(now Appellant), or public or media and before
Discovery was allowed to be obtained - although it
was requested properly according to the Arkansas
Court Rules of Civil Procedure - including numerous
witness statements, medical documentation, letters
and other documents - and ruled against the
Appellant and his claim without cause or any
legal grounds.

Exhibit number one is the State Claims Commission Docket Opinion wherein the Claims Commission granted Respondents Motion To Dismiss, "For reasons 1-6 set forth in the motion."

Exhibit number two is the Respondents (now Appellee) Motion to Dismiss, Signed by Ms. Lisa Mills Wilkins, Arkansas Bar number 87190 and where she describes herself as an, "Attorney Supervisor".

Respondents Motion To Dismiss, "Reasons 1-6", are not, and do not come even close for, "Reasons to dismiss". What is identified as 1 through 6 on the Document (Exhibit no. 2) is the Appellee's convoluted and misleading version of events leading to Appellant's claim.

Not one single ground was offered by Appellee's that could even be misconstrued as a "reason" to dismiss this claim. No legal grounds exist to dismiss this claim and no legal argument was offered.

The Claims Commission has been described as, "The conscience of the state of Arkansas" (Forward; Claims Commission Rules and Regulations Handbook), and its primary function is to serve as a fact-finding body for the General Assembly.

The Director of the Commission is,

②

and has been, Mr. Norman L. Hodges, jr. - clearly for far too long. The Claims Commission's actions are a Judicial proceeding governed by the Arkansas Court Rules of Civil Procedure and the States Administrative Procedures, particularly, Arkansas Code Annotated 25-15-208, which states, "(a) in every case of adjudication: (1) all parties shall be afforded an opportunity for hearing after reasonable notice. (2) The notice shall include: (A) A statement of the time, place and nature of the hearing; (B) A statement of the legal authority and jurisdiction under which the hearing is to be held; (C) A short and plain statement of the matters of fact and law asserted. (4) Opportunity shall be afforded all parties to respond to and present evidence and argument on all issues involved. The Claims Commission was and is legally obligated to afford the Claimant a hearing - and a hearing was never announced or held, in violation of State law and State and federal Constitution - wherein Due Process is guaranteed. There must be a level field of practice.

What is and should be clear to this Honorable Assembly, by this clear and concise Appeal, is that there is, and has been, a Commission, Commissioner, and supporting staff - particularly lawyers that represent the state, that has run amok, without

Supervision, without any type of oversight and clearly out of control. It is clear that Mr. Hodges has become far too comfortable in his long time appointment as Director of the Commission and has taken it upon himself to decide who will or will not receive justice. Nor is this a single incident, but more of a continuing pattern of injustice, corruption and dishonesty in State government and lack of transparency. The Commissioner, Commission and involved lawyers representing the state have violated laws, statutes, ethical and moral obligations, rules and other guidelines and in addition to the relief sought an investigation should and must be ordered and conducted into the ongoing corruption within the Claims Commission. A similar case, 10-0829-CC, with a similar order in its opinion, should give this governing body insight and incentive to investigate and to end the tyranny being inflicted and the dishonor being dumped upon the dignity of the State of Arkansas and its citizens.

Wherefore, for the above stated and the evidence submitted, an order granting reversal of the Commission's ruling must be issued, granting the Appellant the relief sought and an investigation of the Commission also be ordered, the evidence examined and the numerous cases of injustice be brought back before an impartial and fair Commission,

beginning with this case, to be adjudicated according to the law. This will be an opportunity for the Great State of Arkansas to regain its honor and integrity and remove any blemish brought on by this continuing concession.

Sincerely Submitted,
Harry Surbur 89794

Harry Surbur # 089794
P.O. Box 970
Marianna, Arkansas 72360

Appellant, after being duly sworn, do hereby affirm that the statements, matters and things contained in my petition are a true and accurate account to the best of my knowledge, information, and belief.

State of Arkansas }
County of DeWitt }

Subscribed and sworn to before me, a Notary Public, on this 27 day of October, 2014.

Geneva V. Jones
Notary Public

My Commission expires 1-10-2015

GENEVA V. JONES
NOTARY PUBLIC-STATE OF ARKANSAS
LEE COUNTY
My Commission Expires 01-10-2015

Carbon Copies have been sent, via the U.S. mail
to the Arkansas Democrat Gazette, The Clerk of the
General Assembly, Governor Mike Beebe, and the
President of the Senate.

Two copies have been kept for the file.

Harry Surber

Harry Surber

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

HARRY SURBUR (ADC #089794)

CLAIMANT

V.

NO. 14-0877-CC

ARKANSAS DEPARTMENT OF CORRECTION

RESPONDENT

RESPONDENT'S MOTION TO DISMISS

COMES NOW the Respondent, Arkansas Department of Correction, and for its MOTION TO DISMISS, states and responds as follows:

1. Claimant alleges that on June 20, 2013, officers failed to follow policy, acted negligently and he suffered a personal injury when his cellmate Inmate Hurlbut was not cuffed simultaneously and attempted to assault him before Claimant was removed from the cell by the officers. He seeks \$12,499.00 in damages.

2. Claimant was being handcuffed at the cell door and Inmate Hurlbut was pretending to be asleep on his rack and refusing the officers direct orders to come to the cell doors to be cuffed so they could be escorted together. Officer Granville was next to Claimant and had cuffed him when Inmate Hurlbut jumped from his rack and ran toward Claimant flailing his arms. Claimant was not knocked to the ground. One officer states that Claimant was struck one or two times before Inmate Hurlbut was sprayed with OC spray and ran to the back of the cell. Claimant was removed from the cell and placed on the floor in the hall. He was seen by medical where no bleeding was observed, but he had a nickel sized bump on the back of his head which was treated with an ice pack.

3. During the investigation into the incident, Internal Affairs believe that the incident was staged due to finding a letter written by Claimant to Inmate Hurlbut's mother three (3) days later wherein Claimant is very complimentary of Inmate Hurlbut and tells his mother that Claimant only wants to help him and that he should not talk to the officers or anyone RIGHT NOW! See Exhibit "A"

* 4. Claimant was not seen by medical for any other treatment.

* 5. Claimant states that he was handcuffed and not allowed to defend himself from Inmate Hurlbut. If Claimant had defended himself, then he would have been written a disciplinary.

* 6. Claimant states that the officers did not protect him. Such is not the case, they immediately ordered Inmate Hurlbut to stop, sprayed him with OC spray and removed Claimant from the cell simultaneously. Officers acted quickly and appropriately.

7. Claimant has failed to state a cause of action for this claim under ARCP Rule 12(b)(6). Respondent prays that the claim be dismissed.

WHEREFORE, for the reasons stated above and the evidence submitted, the Claims filed must be dismissed.

Respectfully submitted,

Department of Correction
Office of Counsel

Lisa Mills Wilkins
LISA MILLS WILKINS Ark. Bar #87190

Attorney Supervisor
Post Office Box 8707
Pine Bluff, AR 71611
(870)267-6844 Office
(870)267-6373 Facsimile

CERTIFICATE OF SERVICE

I certify that a copy of the above MOTION TO DISMISS has been served this 15 day of September, 2014, on the below Claimant by placing a copy of the same in the U. S. Mail, regular postage to:

HARRY SURBUR (ADC #089794)
EAMU
P. O. Box 180
BRICKEYS, AR 72320-0180


LISA MILLS WILKINS Ark. Bar #87190