

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRUCE LAUDENBERGER : CIVIL ACTION  
 :  
 v. :  
 :  
 MAJOR SCIOTTI, et al. : NO. 99-4155

**MEMORANDUM AND ORDER**

HUTTON, J.

August 9, 2000

Presently before this Court are Defendant Associate Warden Robert Bodner ("Bodner"), Major Sciotti ("Sciotti"), Lieutenant Ritter ("Ritter"), and Robin's (collectively, the "Defendants") Motion to Dismiss (Docket No. 9) and Plaintiff Bruce Laudenberger's ("Plaintiff") response thereto (Docket No. 11). For the foregoing reasons, said Motion is **GRANTED in part and DENIED in part.**

**I. BACKGROUND**

Pro se plaintiff is currently incarcerated in a Commonwealth correctional institution. At approximately 10:30 pm, on September 2, 1998, Plaintiff, who was locked in his cell in Administrative Segregation in Lancaster County Prison, was approached by Ritter and six other corrections officers. Plaintiff had caused a disturbance some time prior. He was told to go to the back of his cell and place his hands on the wall.

Plaintiff feared for his life because he had been threatened by a corrections officer on September 1, 1998. He considered the

approach of Ritter and the other corrections officers to be a threat. Ritter then "led the group to restrain [Plaintiff] but [Plaintiff] was trying to keep them from beating on" him. (Compl. at ¶ 4).

"Under the direction" of Ritter, Plaintiff was choked until he lost consciousness, beaten about the face, neck, ribs, and chest and his hair was "extracted." (Compl. at ¶ 5). Plaintiff was then transferred to another cell on the same block where he was shackled to a bunk and beaten. Defendant Robin, a nurse, was thereafter summoned to check Plaintiff's restraints. Robin did not examine Plaintiff.

The restraints on Plaintiff's wrists were so tight that his circulation was impaired, and his fingers and hand started to go numb. No prison personnel answered his cries for help which continued for approximately four hours.

At approximately 3:30 am, correctional officers Simone and Geiter entered the cell in which Plaintiff was shackled. They discovered that Plaintiff had been beaten and that his restraints were improperly secured. Simone ordered that three photographs be taken of Plaintiff's face, hands, chest, and ribs.

Plaintiff seeks relief against Ritter "for not controlling [sic] his command and make [sic] sure that [Plaintiff] was secured properly (neglect)." (Compl. at ¶ 20). Plaintiff seeks relief against Robin "for her lack of concern, had she inspected

[Plaintiff's] restraints (neglect) at the end, none of [Plaintiff's] appendages would have been damaged (wrists, hands)." (Compl. at ¶ 20). Additionally, Plaintiff seeks relief against Bodner for not penalizing Ritter for his actions.

Plaintiff also claims that his legal papers, personal letters, and cosmetics were destroyed and that his attempts to pursue administrative remedies were unsuccessful. He seeks relief against Sciotti for "unjustifiable destruction of legal papers and delay in proceedings to secure relief in a respectable amount of time." (Compl. at ¶ 20).

Plaintiff asserts claims under 42 U.S.C. § 1983 for alleged violations of his Fourteenth Amendment, Eighth Amendment, and Fourth Amendment rights. Defendants seeks dismissal of Plaintiff's claims.

## **II. LEGAL STANDARD**

When considering a motion to dismiss a complaint for failure to state a claim under Rule 12(b)(6),<sup>1</sup> this Court must "accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them. Dismissal under Rule

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<sup>1</sup>. Rule 12(b)(6) provides that:

Every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted . . . .

Fed. R. Civ. P. 12(b)(6).

12(b)(6) . . . is limited to those instances where it is certain that no relief could be granted under any set of facts that could be proved." Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990) (citing Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988)); see H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50, 109 S. Ct. 2893 (1989). A court will only dismiss a complaint if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." H.J. Inc., 492 U.S. at 249-50, 109 S. Ct. 2893 (quoting Hishon v. King & Spalding, 467 U.S. 69, 73, 104 S. Ct. 2229 (1984)). Nevertheless, a court need not credit a plaintiff's "bald assertions" or "legal conclusions" when deciding a motion to dismiss.<sup>2</sup> See Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997).

### III. DISCUSSION

In order to bring a successful § 1983 claim, a plaintiff must demonstrate that the challenged conduct was committed by a person acting under color of state law and that the conduct deprived the plaintiff of a right, privilege, or immunity secured by the Constitution or federal law. See Piecknick v. Pennsylvania, 36

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<sup>2</sup> It must be noted, however, that federal courts observe the time-honored practice of liberally construing a pro se plaintiff's pleadings. See, e.g., Haines v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594 (1972) ("[A]llegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence"); Zilich v. Lucht, 981 F.2d 694, 694 (3d Cir. 1992) ("When ... plaintiff is a pro se litigant, we have a special obligation to construe his complaint liberally.").

F.3d 1250, 1255-56 (3d Cir. 1994); Carter v. City of Philadelphia, 989 F.2d 117, 119 (3d Cir. 1993). Section 1983 provides no substantive rights but rather is a vehicle through which a party may vindicate violations of the Constitution or federal law.

**A. Plaintiff's Eighth Amendment Claims**

The Eighth Amendment provides as follows: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. The Eighth Amendment is made applicable to the states through the Fourteenth Amendment. See Robinson v. California, 370 U.S. 660, 82 S. Ct. 1417 (1962).

The unnecessary and wanton use of force by prison officials to inflict pain upon a prisoner constitutes cruel and unusual punishment in violation of the Eighth Amendment. See Hudson v. McMillian, 503 U.S. 1, 3, 112 S. Ct. 995 (1992); Whitley v. Albers, 475 U.S. 312, 319, 106 S. Ct. 1078 (1986). To sustain an Eighth Amendment claim, a plaintiff must show that the defendant acted with a sufficiently culpable state of mind and that the alleged wrongdoing was sufficiently serious to establish a constitutional violation. See Hudson, 503 U.S. at 7, 112 S. Ct. 995.

When addressing a claim for use of excessive force, the focus is on whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically to cause harm. Hudson, 503 U.S. at 6-7, 112 S. Ct. 995. Factors to be

considered include the extent of injury suffered by an inmate, the threat reasonably perceived by responsible officers, the need for application of force, the relationship between that need and the force used and any attempt realistically to avert the use of force. Id. at 7.

There is no Eighth Amendment violation for a de minimis use of physical force, provided such force is not "repugnant to the conscience of mankind." Hudson, 503 U.S. at 9-10, 112 S. Ct. 995. "When prison officials maliciously and sadistically use force to cause harm, contemporary standards of decency always are violated. This is true whether or not significant injury is evident." Id. at 9, 112 S. Ct. 995. Thus, "the absence of significant resulting injury is not a per se reason for dismissing a claim based on alleged wanton and unnecessary use of force against a prisoner." Brooks v. Kyler, 204 F.3d 102, 108 (3d Cir. 2000). The "use of wanton, unnecessary force resulting in severe pain" is actionable. Id. at 109.

The Complaint states that Ritter violated the Eighth Amendment when he beat and shackled Plaintiff on September 2-3, 1998. The Court cannot conclude upon review of the Complaint that the use of force against Plaintiff was de minimis. Therefore, the Court turns to the sufficiency of Plaintiff's allegations.

Defendants argue that Ritter cannot be liable for an Eighth Amendment violation because Plaintiff fails to allege that Ritter

"actually participated in the alleged beating or restraining of Plaintiff." (Defs.' Mot to Dismiss at 5). Plaintiff alleges, however, that Ritter "led" the group of corrections officers that allegedly beat Plaintiff and that the corrections officers acted "[u]nder the direction" of Ritter. (Compl. at ¶¶ 4-5). Plaintiff also alleges that he did not understand the corrections officers' use of force given that he was in his cell at the time he was allegedly beaten. Finally, Plaintiff alleges that he was severely injured as a result of the beating he suffered at the hands of Ritter and the corrections officers under Ritter's direction. (See Compl. at ¶ 21). The Court finds that Plaintiff's allegations are sufficient to sustain § 1983 cause of action against Ritter for violation of Plaintiff's Eighth Amendment rights. The Court now turns to Plaintiff's claims against Ritter and Robin that he received inadequate medical care.

The Eighth Amendment also provides a constitutional basis for a § 1983 claim by a prisoner who alleges inadequate medical care. Nevertheless, "[f]ailure to provide medical care to a person in custody can rise to the level of a constitutional violation [of the Eighth Amendment] under § 1983 only if that failure rises to the level of deliberate indifference to that person's serious medical needs." Groman v. Township of Manalapan, 47 F.3d 628, 636-37 (3d Cir. 1995).

The "deliberate indifference" standard is, in effect, a two-

pronged test, requiring (1) that the prisoner's medical needs be serious, and (2) that there be deliberate indifference on the part of defendants. See Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 762 (3d Cir. 1979); Monmouth County Correctional Inst. Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir. 1987), cert. denied, 486 U.S. 1006, 108 S. Ct. 1731 (1988). A mere disagreement with the form of treatment does not rise to a constitutional violation. See Estelle v. Gamble, 429 U.S. 97, 107, 97 S. Ct. 285 (1976).

Plaintiff claims that Robin wholly failed examine him or to ensure that his restraints were properly attached. He also alleges that Robin told him that he "was where [he] belonged." (Compl. at ¶ 9). Defendants argue that Robin's actions do not amount to deliberate indifference. The statement that Plaintiff attributes to Robin, however, provides indicia (at this juncture of this lawsuit) of deliberate indifference. Plaintiff's allegations are sufficient to demonstrate that his medical needs were serious and that Robin was deliberately indifferent to his needs. Therefore, his Eighth Amendment claim against Robin survives the instant Rule 12(b)(6) Motion.

Similarly, Plaintiff claims that his Eighth Amendment rights were violated when Ritter failed to ensure that the restraints placed on Plaintiff were properly applied. Defendants argue that "mere neglect or negligence would not rise to the constitutional level of 'malicious and sadistic' which is necessary for a cruel

and unusual punishment claim." (Defs.' Mot. to Dismiss at 5). While the Court agrees that mere negligence does not provide a basis for a constitutional claim, the Court refuses to dismiss Plaintiff's inadequate medical care claim against Ritter given the serious nature of Plaintiff's allegations and the harm allegedly inflicted on Plaintiff by Ritter and the corrections officers under Ritter's control. The Complaint's allegations regarding Ritter are sufficient to survive the instant Rule 12(b)(6) Motion.

Finally, liability under § 1983 cannot be imposed vicariously or under the grounds of respondeat superior. See Rode v. Dellarciprete, 845 F.2d 1195 (3d Cir. 1988); Hampton v. Holmesburg Prison Officials, 546 F.2d 1077, 1082 (3d Cir. 1976). A § 1983 defendant's conduct must have a close causal connection to plaintiff's injury for liability to attach. See Martinez v. California, 444 U.S. 277, 285, 100 S. Ct. 553 (1980). A defendant must have participated in or had knowledge and acquiesced in the alleged violation. See Robinson v. City of Pittsburgh, 120 F.3d 1286, 1293 (3d Cir. 1999). Allegations of participation or actual knowledge and acquiescence must be made with particularity. See Rode, 845 F.2d at 1207. The mere fact that a defendant may hold a supervisory position is insufficient to find liability. See Wilson v. Horn, 971 F. Supp. 943, 947 (E.D. Pa. 1997).

To the extent that Plaintiff attempts to state an Eighth Amendment claim against Bodner, he fails. Plaintiff seeks relief

against Bodner for Bodner's failure to penalize Ritter for his acts and/or omissions regarding the beating Plaintiff allegedly endured. The Complaint, however, is devoid of allegations concerning Bodner's actual knowledge or acquiescence in the events of September 2-3, 1998. Thus, Plaintiff fails to establish the requisite causal connection between the injuries he allegedly suffered and Bodner's failure to discipline Ritter.

**B. Plaintiff's Fourth Amendment Search and Seizure Claim**

The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." U.S. Const. amend. IV. The Fourth Amendment, as incorporated into the Fourteenth Amendment, applies to the conduct of state officials. See Mapp v. Ohio, 367 U.S. 643, 655, 81 S. Ct. 1684, 1691-92 (1961).

The Fourth Amendment protects individuals against unlawful search and seizure. In order to establish a claim under the Fourth Amendment, a plaintiff must show that the actions of the defendant: (1) constituted a "search" or "seizure" within the meaning of the Fourth Amendment, and (2) were "unreasonable" in light of the surrounding circumstances. See, e.g., Brower v. County of Inyo, 489 U.S. 593, 595-600, 109 S. Ct. 1378 (1989) (affirming two-fold analysis).

A seizure of property occurs when there is some meaningful

interference with an individual's possessory interests in that property. See Sodal v. Cook County, 506 U.S. 56, 61-65, 113 S. Ct. 538, 543 (1992). A seizure of property sufficient to implicate Fourth Amendment rights occurs where the seizure is unreasonable. See id. at 71, 113 S. Ct. 549; Cinea v. Certo, 84 F.3d 117, 124 (1996). The Supreme Court has instructed that "[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application." Bell v. Wolfish, 441 U.S. 520, 559, 99 S. Ct. 1861 (1979). In determining whether a government seizure violates the Fourth Amendment, the seizure must be scrutinized for its overall reasonableness. See Sodal, 506 U.S. at 71, 113 S. Ct. at 549. Such scrutiny requires a careful balancing of governmental and private interests. See id. (citations omitted).

To establish a Fourth Amendment violation under the circumstances of this case, Plaintiff must prove that Sciotti effected a seizure of his property and that Sciotti's conduct was unreasonable. See Carroll v. Borough of State College, 854 F. Supp. 1184 (M.D. Pa. 1994), aff'd, 47 F.3d 30 (3d Cir. 1995). Plaintiff contends that Sciotti violated his Fourth Amendment rights because his legal papers and other personal belongings were unjustifiably destroyed when Sciotti investigated the events of September 2-3, 1998. (See Compl. at ¶¶ 14 & 20). Defendants argue that "no factual allegations exist to support [Plaintiff's]

unlawful search and seizure averment. A legal conclusion is insufficient to establish a cause of action against a defendant." (Defs.' Mot. to Dismiss at 7). Defendants wholly ignore, however, that "[e]very motion . . . shall be accompanied by a brief containing a concise statement of the legal contentions and authorities relied upon in support of the motion." (E.D. Pa. R. Civ. P. 7.1(c) (emphasis added)). The Defendants implicitly request that the Court rely on their unsupported legal conclusions to dismiss Plaintiff's Fourth Amendment claim on the basis that Plaintiff's factual averments are conclusory.<sup>3</sup> Contrary to Defendants' contentions, however, the Court finds that Plaintiff's allegations are not deficient; indeed, they are adequate to defeat the instant Motion as Plaintiff averred that the seizure and destruction of his personal effects, and Sciotti's involvement therein, were unreasonable. Therefore, Plaintiff's claim is actionable and Defendants' Motion must fail.

### **C. Plaintiff's Fourteenth Amendment Due Process Claim**

The Fourteenth Amendment states in relevant part as follows:  
"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor

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<sup>3</sup> As a general matter, Defendants' Motion is woefully inadequate as it does little more than set forth unsupported legal conclusions. Citation to relevant legal authority not only assists the Court understand the underpinnings of a movant's legal arguments, it is required by Local Rule 7.1(c). See E.D. Pa. R. Civ. P. 7.1(c). Defendants should familiarize themselves with the federal and local rules of civil procedure prior to filing subsequent papers and pleadings in this Court.

shall any State deprive any person of life, liberty, or property, without due process of law. . . ." U.S. Const. amend. XIV, § 1.

Prisoners are entitled to the protections of the Due Process Clause. Procedural due process claims encompass challenges to the constitutional adequacy of state law procedural protections as they relate to the constitutionally protected interest in life, liberty, and property. Under the rubric of procedural due process, the deprivation itself is not actionable but deprivation without the required process is actionable. Substantive due process encompasses challenges to the unreasonable and arbitrary actions of the state or state actors.

As with all § 1983 claims, "the first step is to identify the exact contours of the underlying right said to have been violated." County of Sacramento v. Lewis, 523 U.S. 833, 841 n.5, 118 S. Ct. 1708, 1714 n.5 (1998). To the extent that Plaintiff claims a substantive due process deprivation based on the physically abusive conduct of Ritter, he is precluded from making such a claim. "[I]f a constitutional claim is covered by a specific constitutional provision, such as the Fourth or Eighth Amendment, the claim must be analyzed under the standard appropriate to that specific provision, not under the rubric of substantive due process." United State v. Lanier, 520 U.S. 259, 272 n.7, 117 S. Ct. 1219, 1228 n.7 (1997). Therefore, as Plaintiff brings an Eighth Amendment claim against Ritter and Robin for their acts an/or

omissions regarding his physical health and well-being, their conduct cannot be challenged again under the Due Process Clause.

One means for Plaintiff to pursue a due process claim lies in the alleged destruction of his legal papers. Where a prisoner's complaint alleges the taking of legal property that results in the denial of his access to the courts, the availability of state post-deprivation remedies does not foreclose the inmate's claims that he or she was denied substantive due process. See Zilich v. Lucht, 981 F.2d 694, 696 (3d Cir. 1992). Defendants' entire argument against Plaintiff's substantive due process claim follows: "It is assumed that Plaintiff was referring to procedural, rather [sic] than substantive Due Process since a substantive Due Process claim would only refer to a pre-trial detainee rather than a convicted inmate." (Defs.' Mot. to Dismiss at 6 n.1). The flaws in Defendants' unsupported and legally erroneous argument need not be examined. As Plaintiff alleges that his legal papers were destroyed by Sciotti and the destruction of his papers led to a "delay in proceedings," (Compl. at ¶ 20), he facially states a substantive due process claim. Therefore, Defendants' Motion must fail as it relates to Plaintiff's substantive due process claim.

A second means for Plaintiff to pursue a due process claim lies in Sciotti's alleged refusal of administrative remedies to Plaintiff. (See Compl. at ¶¶ 17 & 20). The Supreme Court stated as follows:

[A]n unauthorized intentional deprivation of property by a state employee does not constitute a violation of the procedural requirements of the Due Process Clause of the Fourteenth Amendment if a meaningful postdeprivation remedy for the loss is available. For intentional, as for negligent deprivations of property by state employees, the state's action is not complete until and unless it provides or refuses to provide a suitable postdeprivation remedy.

Hudson v. Palmer, 468 U.S. 517, 533, 104 S. Ct. 3194, 3204 (1984).

In light of the Hudson holding, Plaintiff's allegation that Sciotti refused him the opportunity to pursue his administrative remedies is sufficient under Rule 12(b)(6) to state a claim for deprivation of his due process rights. Accordingly, Defendants' Motion will be denied as to Plaintiff's Fourteenth Amendment claim.

An appropriate Order follows.

