

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

JOSE VAZQUEZ,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	No. 99-5670
	:	
DOUGLAS CROLEY, TIMOTHY PAJSKI,	:	
JOSE GONZALEZ, WARDEN WAGNER,	:	
BERKS COUNTY, and THE BERKS	:	
COUNTY PRISON BOARD,	:	
	:	
Defendants.	:	

MEMORANDUM

ROBERT F. KELLY, J.

JULY, 31 2001

Presently before this Court is the Motion for Summary Judgment filed by the Defendants Douglas Croley ("Croley"), Timothy Pajski ("Pajski"), Jose Gonzalez ("Gonzalez"), Warden Wagner ("Wagner"), Berks County ("the County"), and the Berks County Prison Board ("the Prison Board") (collectively, "the Defendants"). The Motion arises out of Plaintiff Jose Vazquez's ("Vazquez") Amended Complaint which alleges that he was assaulted by Croley, a corrections officer at the Berks County prison, while Vazquez was an inmate at the prison. For the following reasons, the Motion is granted in part and denied in part.

I. FACTS

When considering a motion for summary judgment, all reasonable inferences must be made in favor of the non-moving party. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

Therefore, in this Opinion, we rely most heavily on the facts as provided in Vazquez's Amended Complaint and his Response to Defendants' Motion for Summary Judgment. During the time period in question, Vazquez was incarcerated at the Berks County prison. According to Vazquez, on July 29, 1998, corrections officer Croley arrived at Vazquez's cell, handcuffed Vazquez and led him to the locker room where he was to be strip searched. At the locker room, Croley stated to Vazquez, "what are you looking at punk?" (Pl.'s Resp. to Defs.' Mot. Summ. J., p. 2). Vazquez remained silent. During this time, Gonzalez and Pajsky, two other corrections officers, also arrived at the locker room. Gonzalez opened the door to the locker room and Croley ordered Vazquez into the room by stating "get in there, punk." (Id. at 3). According to Vazquez, he then entered the locker room. Croley then hit Vazquez on his arms and chest with his elbow. Vazquez fell and the chain from the handcuffs struck his chin and teeth, cutting his chin and chipping two of his teeth. Vazquez also sustained bruises on his chest. Croley then left at Gonzalez's behest and Gonzalez, with Pajsky present, searched Vazquez. Vazquez then requested medical attention for the cut on his chin, which he received.

II. STANDARD

Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is proper "if there is no genuine

issue as to any material fact and the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). The moving party has the initial burden of informing the court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Celotex, 477 U.S. at 323. An issue is genuine only if there is a sufficient evidentiary basis on which a reasonable jury could find for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). A factual dispute is material only if it might affect the outcome of the suit under governing law. Id. at 248.

To defeat summary judgment, the non-moving party cannot rest on the pleadings, but rather that party must go beyond the pleadings and present "specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e). Further, the non-moving party has the burden of producing evidence to establish prima facie each element of its claim. Celotex, 477 U.S. at 322-23. If the court, in viewing all reasonable inferences in favor of the non-moving party, determines that there is no genuine issue of material fact, then summary judgment is proper. Id. at 322; Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 83 (3d Cir. 1987).

III. DISCUSSION

There are four remaining counts in Vazquez's Amended

Complaint.¹ Count I alleges that all of the Defendants violated 42 U.S.C. § 1983 ("§ 1983") and the Eighth Amendment by using excessive force against Vazquez. Count III alleges that all of the Defendants violated § 1983 and the Fourteenth Amendment by depriving Vazquez of his liberty interest in not being subjected to excessive force without due process of law. Count V alleges that all of the Defendants committed assault and battery on Vazquez. Lastly, Count VI alleges that all of the Defendants were negligent and breached a duty of care owed to Vazquez.

A. COUNT I: Excessive Force under § 1983 and the Eighth Amendment

In Count I of the Amended Complaint, Vazquez alleges that the Defendants violated § 1983 and the Eighth Amendment when Croley allegedly used excessive force against him. After viewing the facts in the light most favorable to Vazquez, genuine issues of material fact remain regarding Vazquez's allegations of excessive force in violation of § 1983 and the Eighth Amendment against Croley, Gonzalez, and Pajsky. Therefore, summary judgment in favor of these three Defendants on Count I is denied.

However, summary judgment on this count is granted in favor of Wagner, the County, and the Prison Board. Vazquez does not allege that any of these three Defendants were directly

¹ On March 9, 2001, all parties stipulated to the dismissal of Count II of the Amended Complaint. Also, the Amended Complaint does not contain a Count IV. Therefore, only Counts I, III, V, and VI are at issue in the Motion for Summary Judgment.

involved in the alleged use of excessive force. In a § 1983 case, municipal defendants may not be held liable under a theory of respondeat superior. Monell v. Dept. of Soc. Serv. of the City of N.Y., 436 U.S. 658, 691 (1978). Instead, Vazquez must demonstrate that the violation of his rights was caused by either a policy or a custom of the municipal defendants.² Berg v. County of Allegheny, 219 F.3d 261, 275 (3rd Cir. 2000); cert. denied ___ U.S. ___, 121 S. Ct. 762 (2001).

Policy may be shown where an employee or agent of the municipality acts pursuant to an official policy or edict of the municipality. Monell, 436 U.S. at 690. Alternatively, policy may be shown "where the decisionmaker possesses final authority to establish municipal policy with respect to the action ordered". Pembaur v. City of Cincinnati, 475 U.S. 469, 481 (1986) (Brennan, J., plurality opinion). Custom may also be proven in two ways. First, custom "can be proven by showing that a given course of conduct, although not specifically endorsed or authorized by law, is so well-settled and permanent as virtually to constitute law." Bielewicz v. Dubinon, 915 F.2d 845, 850 (3d Cir. 1990). "Custom . . . may also be established by evidence of knowledge and acquiescence" by the final policymakers. Beck v. City of Pittsburgh, 89 F.3d 966, 971 (3d Cir. 1996). However, a

² For the purposes of this discussion only, we will assume that Croley violated Vazquez's Eighth Amendment rights.

plaintiff cannot prove a custom based simply on one instance of the custom. Groman v. Twp. of Manalapan, 47 F.3d 628, 637 (3d Cir. 1995).

Here, in the Amended Complaint, Vazquez simply alleges that:

On information and belief, defendants Croley, Pisky [sic], and Gonzalez were acting pursuant to a well-settled policy or custom of the defendants Warden Wagner, the County of Berks, and the Berks County Prison Board. In the alternative, it is believed that the beating was the result of the defendants Warden Wagner's, County of Berks', and the Berks County Prison Board's failure to train defendants Croley, Pisky [sic], and Gonzalez, which amounted to deliberate indifference to the rights of the plaintiff.

(Am. Compl. ¶ 28). As stated earlier, in order to defeat summary judgment, the non-moving party may not simply rest on the pleadings, but rather that party must go beyond the pleadings and present "specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e). Further, the non-moving party has the burden of producing evidence to establish prima facie each element of its claim. Celotex, 477 U.S. at 322-23.

In their Motion for Summary Judgment, the Defendants provide deposition evidence that it is the policy of the Berks County Prison to use the least amount of force necessary and that all corrections officers are given pre-employment training in the use of force and are required to attend another eight days of training per year in the use of force. (Defs.' Mot. Summ. J.,

Ex. H, pp. 26-27). Vazquez does not dispute this evidence, nor does he counter it with other evidence of policy or custom. Vazquez also does not discuss the liability of these three Defendants in his Response to the Motion for Summary Judgment nor does he counter the arguments and evidence produced in the Motion for Summary Judgment. Vazquez has not established a prima facie case concerning Count I against Wagner, the County, and the Prison Board nor has he gone beyond the pleadings and presented "specific facts showing that there is a genuine issue for trial" concerning this issue. FED. R. CIV. P. 56(e). Therefore, summary judgment in favor of Wagner, the County, and the Prison Board on Count I of the Complaint is appropriate.

B. COUNT III: Excessive Force under § 1983 and the Fourteenth Amendment

In Count III of the Amended Complaint, Vazquez alleges that "through the excessive force inflicted upon him by Officer Croley and the failure of the Officers Gonzales and Pajsky to intervene or otherwise prevent the use of excessive force, Defendants deprived him of his liberty interest under the Fourteenth Amendment." (Pl.'s Resp. to Defs.' Mot for Summ. J., p. 13). After viewing the facts in the light most favorable to Vazquez, genuine issues of material fact remain regarding Vazquez's allegations of excessive force in violation of § 1983 and the Fourteenth Amendment against Croley, Gonzalez, and Pajsky. Therefore, summary judgment in favor of these three

Defendants on Count III is denied. However, as discussed in section III. B. of this Opinion, because Vazquez has failed to establish a policy or custom of allowing excessive force, summary judgment on Count III is granted in favor of Wagner, the County, and the Prison Board. Monell, 436 U.S. 658.

C. COUNT V: Assault and Battery

In Count V of the Amended Complaint, Vazquez alleges that the Defendants are liable for assault and battery stemming from Crowley's alleged attack on Vazquez. After viewing the facts in the light most favorable to Vazquez, genuine issues of material fact remain regarding whether Crowley assaulted and battered Vazquez and whether Wagner, the County, and the Prison Board are also liable for Crowley's acts. Therefore, summary judgment in favor of these four Defendants on Count V is denied.

However, summary judgment on this count is granted in favor of Gonzales and Pajski. Under Pennsylvania law, "an assault occurs when an actor intends to cause an imminent apprehension of a harmful or offensive bodily contact." Paves v. Corson, 65 A.2d 1128, 1138 (Pa. Super. 2000) (citing Sides v. Cleland, 648 A.2d 793, 796-97 (Pa. Super. 1994) (citing Restatement (Second) of Torts, § 21)). Furthermore, a battery is defined as harmful or offensive contact. Dalrymple v. Brown, 701 A.2d 164, 170 (Pa. 1997). Vazquez does not provide any facts or evidence that would support a finding that Gonzales and Pajski

committed assault and battery upon Vazquez or were in some way responsible for Crowley's alleged assault and battery upon Vazquez. Therefore, summary judgment on Count V of the Amended Complaint in favor of Gonzales and Pajski is appropriate.

D. COUNT VI: Negligence

In Count VI of the Amended Complaint, Vazquez alleges that the Defendants were negligent and violated a duty of care owed to him when Croley allegedly assaulted him. After viewing the facts in the light most favorable to Vazquez, genuine issues of material fact remain regarding Vazquez's allegations of negligence against Croley, Gonzalez, and Pajsky. Therefore, summary judgment in favor of these three Defendants on Count VI is denied.

However, summary judgment on this count is granted in favor of Wagner, the County, and the Prison Board. Negligence is the absence of ordinary care that a reasonably prudent person would exercise in the same or similar circumstances. Martin v. Evans, 711 A.2d 458, 461 (Pa. 1998). Under Pennsylvania law, in order to establish negligence, the plaintiff must show that the defendant owed a duty of care to the plaintiff, the defendant breached that duty, that the breach resulted in injury to the plaintiff, and that the plaintiff suffered an actual loss or damage. Id. Furthermore, the mere occurrence of an accident does not establish negligent conduct. Id. Rather, the plaintiff

must establish that the defendants engaged in conduct that deviated from the general standard of care expected under the circumstances, and that this deviation proximately caused actual harm. Id.

Assuming that Wagner, the County, and the Prison Board had a duty to protect Vasquez from excessive force, that duty was not breached. The Defendants have produced uncontroverted evidence that all of the Berks County corrections officers must attend extensive training every year regarding the use of force. (Defs.' Mot. for Summ. J., Ex. H, pp. 26-27). Furthermore, Vazquez seeks to establish negligence based upon only one incident. Vazquez has not provided sufficient evidence that these three Defendants deviated from the general standard of care expected under the circumstances. Moreover, the Defendants have provided uncontroverted evidence that Wagner, the County, and the Prison Board have exercised the ordinary care that a reasonably prudent person would exercise in the same or similar circumstances. Therefore, summary judgment on Count VI of the Amended Complaint in favor of Wagner, the County, and the Prison Board is appropriate.

IV. CONCLUSION

Summary judgment on Count I of the Amended Complaint, excessive force under the Eighth Amendment, and on Count III of the Amended Complaint, excessive force under the Fourteenth

Amendment is granted in favor of Wagner, the County, and the Prison Board because Vazquez has failed to establish a policy or custom of allowing excessive force under Monell, 436 U.S. 658. Summary judgment on Count V of the Amended Complaint, assault and battery, is granted in favor of Gonzalez and Pajsky because Vazquez has failed to provide evidence that these two Defendants committed assault and/or battery. Finally, summary judgment on Count VI of the Amended Complaint, negligence, is granted in favor of Wagner, the County, and the Prison Board because Vazquez has failed to establish that these Defendants have breached a duty towards him. The remainder of the Motion for Summary Judgment is denied.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
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JOSE VAZQUEZ,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	No. 99-5670
	:	
DOUGLAS CROLEY, TIMOTHY PAJSKI,	:	
JOSE GONZALEZ, WARDEN WAGNER,	:	
BERKS COUNTY, and THE BERKS	:	
COUNTY PRISON BOARD,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 31st day of July, 2001, upon consideration of Defendants' Motion for Summary Judgment (Dkt. No. 30), and any Responses thereto, it is hereby ORDERED that:

1. summary judgment on Count I of the Amended Complaint, excessive force under the Eighth Amendment, is GRANTED in favor of Warden Wagner ("Wagner"), Berks County ("the County"), and the Berks County Prison Board ("the Prison Board") and is DENIED as to Douglas Croley ("Croley"), Timothy Pajski ("Pajski"), and Jose Gonzalez ("Gonzalez");

3. summary judgment on Count III of the Amended Complaint, excessive force under the Fourteenth Amendment, is GRANTED in favor of Wagner, the County, and the Prison Board and is DENIED as to Croley, Pajski, and Gonzalez;

4. summary judgment on Count V of the Amended Complaint, assault and battery, is GRANTED in favor of Gonzalez

and Pajsky and is DENIED as to Crowley, Wagner, the County, and the Prison Board; and

5. summary judgment on Count VI of the Amended Complaint, negligence, is GRANTED in favor of Wagner, the County, and the Prison Board and is DENIED as to Croley, Gonzalez, and Pajsky.

BY THE COURT:

ROBERT F. KELLY, J.