

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

RAMON L. CORDERO, SR.	:	CIVIL ACTION
	:	
v.	:	
	:	
CORRECTIONAL OFFICER J.	:	
FAULKNER, <u>et al.</u>	:	NO. 01-0626

MEMORANDUM AND FINAL JUDGMENT

HUTTON, J.

March 1, 2002

Presently before this Court is the unopposed Motion of Defendants Vincent A. Guarini and J. Faulkner to Dismiss the case at bar for Plaintiff's Failure to Respond to Defendants' Motion for Summary Judgment (Docket Nos. 16-17). For the reasons outlined below, Defendants' Motion is **GRANTED** and summary judgment is entered in favor of Defendants.

**I. BACKGROUND**

On February 7, 2001, Plaintiff Ramon L. Cordero ("Plaintiff") initiated a lawsuit against Vincent A. Guarini, Warden of Lancaster County Prison, and Correctional Officer J. Faulkner ("Faulkner"). Acting pro se, Plaintiff filed a Prisoner Civil Rights claim pursuant to 42 U.S.C. § 1983 alleging the use of excessive force as the result of a January 25, 2001 incident involving Faulkner at the Lancaster County Prison. On the afternoon in question, Faulkner entered Plaintiff's cell and conducted a "shakedown," or search of

the cell for contraband items. Faulkner placed the contraband items, including an extra pen, on a table in front of Plaintiff. Plaintiff picked up the contraband pen and threw it at the table. Faulkner then attempted to "push" Plaintiff back into his cell where Plaintiff picked up a second pen. Plaintiff then "put the pen in the air" while Faulkner was looking towards to Officers' station. See Dep. of Ramon Cordero, October 5, 2001, at 75. When Faulkner "looked back, he [saw] the pen in the air and he jumps back and he jumps forward yelling, 'he's trying to stab me, he's trying to stab me.'" Id. A struggle ensued, and Plaintiff complains that he sustained abrasions on his back, head, neck and face. Plaintiff then commenced the instant lawsuit.

On October 24, 2001, Defendants filed a motion for summary judgement (Docket No. 13). Plaintiff neglected to respond to this motion. Affording Plaintiff the lenience due to a pro se litigant, the Court denied Defendants' motion for summary judgment and instructed Plaintiff to respond to the motion within thirty (30) days from the December 3, 2001 Order. Plaintiff again failed to respond to Defendants' motion and the Order of this Court. Defendants now file the instant motion to dismiss the case for Plaintiff's failure to respond to Defendants' motion. Defendants also request an Order granting Defendants initial summary judgment motion.

## II. LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment has the initial burden of showing the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. See id. at 324. A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the nonmovant. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912, 113 S.Ct. 1262, 122 L.Ed.2d 659 (1993). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's

evidence far outweighs that of its opponent. Id. Nonetheless, a party opposing summary judgment must do more than just rest upon mere allegations, general denials or vague statements. Trap Rock Indus. Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

Furthermore, a court may grant an unopposed motion for summary judgment where it is "appropriate." Fed. R. Civ. Pro. 56(e). This determination has been described as follows:

Where the moving party has the burden of proof on the relevant issues, . . . the district court must determine that the facts specified in or in connection with the motion entitle the moving party to judgment as a matter of law. Where the moving party does not have the burden of proof on the relevant issues, . . . the district court must determine that the deficiencies in the opponent's evidence designated in or in connection with the motion entitle the moving party to judgment as a matter of law.

Anchorage Assocs. v. Virgin Islands Bd. of Tax Review, 922 F.2d 168, 175 (3d Cir. 1990).

### **III. DISCUSSION**

As noted above, Plaintiff has failed to respond to Defendants' motion despite the Order of this Court. In the interest of justice, the Court will examine Defendants' motion on the merits in order to determine if summary judgment is appropriate. Russo v. Henderson, Civ. A. No. 00-4619, 2001 WL 541119, at \*1 (E.D. Pa. May 22, 2001). Because of Plaintiff's failure to respond to the Defendants' motion, the Court is limited to a consideration of the pleadings filed by the parties and the exhibits filed by the Defendants.

**A. Plaintiff's Claim Against Warden Guarini**

With regards to Plaintiff's claim against Warden Guarini, it is an established principle that the doctrine of respondeat superior is not acceptable as a basis for liability under section 1983. See Monell v. Dep't. of Social Servs., 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978); see also Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988). Rather, personal involvement by a defendant is essential in a civil rights action. See Rode, 845 F.2d at 1207; Andrews v. City of Phila., 895 F.2d 1469, 1478 (3d Cir. 1990). "Allegations of personal direction or of actual knowledge and acquiescence" are adequate to demonstrate personal involvement. Rode, 845 F.2d at 1207. Such allegations are required to be "made with appropriate particularity." Id.

Despite having the burden of proof on this issue, Plaintiff has failed to put forth any evidence to prove any direct, or indirect, action by Warden Guarini resulting in improper conduct. In fact, it appears that Plaintiff relies solely on a respondeat superior theory to impose liability, which is clearly not actionable. See Rode, 845 F.2d at 1207. The deficiency in Plaintiff's evidence, along with the evidence offered by Defendants, entitles Defendant Warden Guarini to judgment as a matter of law. Thus, because this Court finds that there is no genuine issue of material fact that Warden Guarini directly caused, knew of, or acquiesced to these alleged violations, this Court

grants Defendants uncontested motion for summary judgment as to Warden Guarini. See Anchorage Assocs., 922 F.2d at 175.

**B. Plaintiff's Section 1983 Claim for Excessive Force**

A plaintiff may bring a section 1983 action if he alleges that a person acting under color of state law deprived him of rights, privileges, or immunities secured by the Constitution or laws of the United States.<sup>1</sup> 42 U.S.C. § 1983; West v. Atkins, 487 U.S. 42, 48-49 (1988); Groman v. Township of Manalapan, 47 F.3d 628, 633 (3d Cir. 1995). "In addressing an excessive force claim brought under section 1983, analysis begins by identifying the specific constitutional right allegedly infringed by the challenged application of force." Graham v. Connor, 490 U.S. 386, 109 S.Ct. 1865 (1989). The Eighth Amendment's prohibition against cruel and unusual punishment controls a prison inmate's alleged violation of his civil rights based on prison officials' use of excessive force. See Whitley v. Albers, 475 U.S. 312, 327, 106 S.Ct. 1078, 89 L.Ed.2d 251 (1986) ("[T]he Eighth Amendment, which is specifically concerned with the unnecessary and wanton infliction of pain in penal institutions, serves as the primary source of substantive

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<sup>1</sup> Section 1983 provides as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1983.

protection to convicted prisoners in cases . . . where the deliberate use of force is challenged as excessive and unjustified." ).

When evaluating an Eighth Amendment claim of excessive force, a court is guided by the standard set out in Whitley v. Albers, 475 U.S. 312, 106 S.Ct. 1078, 89 L.Ed.2d 251 (1986). Under Whitley, a court must consider "whether force was applied in a good-faith effort to maintain or restore discipline or maliciously and sadistically to cause harm." Hudson v. McMillan, 503 U.S. 1, 6-7, 112 S.Ct. 995, 117 L.Ed.2d 156 (1992). Factors to be considered include "the need for application of force, the relationship between that need and the amount of force used, the threat 'reasonably perceived by the responsible officials,' and 'any efforts made to temper the severity of a forceful response.'" Id. at 7 (citations omitted). Accordingly, to raise a successful Eighth Amendment claim, "an inmate must prove both an objective element - that the deprivation was sufficiently serious, and a subjective element - that a prison official acted with a sufficiently culpable state of mind." Young v. Quinlan, 960 F.2d 351, 359-60 (3d Cir. 1992) (citing Wilson v. Seiter, 501 U.S. 294, 111 S.Ct. 2321, 2324, 115 L.Ed.2d 271 (1991)). At a minimum, a plaintiff must demonstrate that the alleged offender acted with deliberate indifference. See Quinlan, 960 F.2d at 360-61.

Drawing all reasonable inferences in the light most favorable

to Plaintiff, it is clear that the force applied by Faulkner was reasonable under the circumstances, in good faith and exerted in an effort to restore discipline to the cell block. According to Plaintiff, he was in possession of two pens in violation of prison rules. See Dep. of Ramon Cordero, October 5, 2001, at 53. On the afternoon in question, Faulkner removed the contraband items from Plaintiff's cell and Plaintiff picked up the contraband pen from the table and threw it. See id. at 74. Faulkner then attempted to "push" Plaintiff back into his cell where Plaintiff picked up the remaining pen. See id. at 75. Plaintiff then "put the pen in the air" while Faulkner was looking towards to Officers' station. See id. When Faulkner "looked back, he [saw] the pen in the air and he jumps back and he jumps forward yelling, 'he's trying to stab me, he's trying to stab me.'" Id. Faulkner then grabbed Plaintiff's "throat with his left hand," pushed Plaintiff back into his cell, and both men then tripped over the bunk in the cell. See id. at 76.

Once in the cell, Plaintiff fell backwards between the bunk and the corner of the cell and hit his head on the wall. See id. As Faulkner reached for his walkie-talkie, which had fallen under the bunk, Plaintiff "got up on the bunk to tr[ied] to run over the bunk and run out of the [cell]." Id. at 89-90. "I guess [Faulkner] knew what I was going to try to do. He put his hand out to stop me. When he put his hand out, it totally knocked me back."

Id. at 90. Plaintiff again fell in the cell and, according to Plaintiff, Faulkner then grabbed Plaintiff by the throat and he passed out. Id. Plaintiff awoke with pain in his neck, back and face, a bump on his forehead, bruises and abrasions.

It is axiomatic that the "infliction of pain in the course of a prison security measure . . . does not amount to cruel and unusual punishment simply because it may appear in retrospect that the degree of force authorized or applied for security purposes was unreasonable, and hence unnecessary in the strict sense." Whitley, 475 U.S. at 319. Rather, in order for liability to attach, a plaintiff must establish that the prison official acted with the requisite state of mind. See id. The Court finds Faulkner did not act with malicious and sadistic intent to harm Plaintiff following the "shakedown" of Plaintiff's cell. Plaintiff himself admits that Faulkner acted in self-defense, albeit ill perceived from Plaintiff's view point. See Dep. of Ramon Cordero, October 5, 2001, at 81. "He attacked me defending himself." Id. Faulkner's actions clearly lacked the requisite intent for liability to attach under section 1983. Therefore, the incident on January 25, 2001 did not constitute excessive force in violation of Plaintiff's right to be free from cruel and unusual punishment. Accordingly, summary judgment is granted in favor of Defendants on this claim.

#### **IV. CONCLUSION**

Once the movant adequately supports its motion pursuant to

Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. Celotex Corp., 477 U.S. at 324. Where the motion is uncontested and "the moving party does not have the burden of proof on the relevant issues," to grant the motion, "the district court must determine that the deficiencies in the opponent's evidence designated in or in connection with the motion entitle the moving party to judgment as a matter of law." Anchorage Assocs., 922 F.2d at 175. In this case, Defendants refute all of Plaintiff's allegations, showing deficiencies in Plaintiff's claims and offering evidence of their own entitling Defendants to judgment as a matter of law. Consequently, this Court grants the motion for summary judgment by Defendants.

This Court's Final Judgment follows.

