

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

<b>TALIA THORNTON,</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiff</b>	:	
	:	
<b>v.</b>	:	<b>NO. 04-2536</b>
	:	
<b>CITY of PHILADELPHIA,</b>	:	
<b>WALTER DUNLEAVY, and</b>	:	
<b>DARYL WATSON,</b>	:	
<b>Defendants</b>	:	

**MEMORANDUM**

**STENGEL, J.** **October** , **2005**

Talia Thornton brought this action under 42 U.S.C. § 1983 in connection with two alleged sexual assaults in a Philadelphia prison in April of 2003. Plaintiff contends the City of Philadelphia, as the owner/operator of the prison, and Walter Dunleavy as the warden, have violated her constitutional rights. Plaintiff contends Daryl Watson, a correctional officer, is liable under 42 U.S.C. § 1983 for treating her with excessive force and for subjecting her to cruel and unusual punishment. Defendants filed motions for summary judgment.<sup>1</sup> For the reasons set forth below, I will grant the City of Philadelphia’s and Warden Dunleavy’s motion for summary judgment and will deny Watson’s motion for summary judgment.

**I. BACKGROUND**

Plaintiff Talia Thornton avers the following:

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<sup>1</sup>Defendants Dunleavy and the City of Philadelphia filed together and are represented by the City Solicitor. Defendant Watson filed pro se.

On April 13, 2003, Talia Thornton was an inmate at the Philadelphia Industrial Correctional Center as a result of a probation violation stemming from a drunk driving conviction. At that time Thornton held a prison job located in the hallway of Unit B within the prison. On April 13, 2003, Thornton was ordered into the ABC triage bathroom located within the prison by defendant correctional officer Daryl Watson. Upon entering the bathroom, Watson groped Thornton, forced down her pants and then forcibly had sexual intercourse with her. Approximately two weeks later, Watson sexually assaulted Thornton a second time, in a similar manner, in the medical facility within the prison. Following the sexual assaults, Watson continually gave cards and letters to Thornton alluding to a sexual relationship between them. Watson promised to help get Thornton out of prison and admonished her to not say anything about their relationship to the investigators from the prison's internal affairs division. Defendant Walter Dunleavy ("Warden Dunleavy"), was the warden of the prison and Watson's supervisor in April of 2003.

Thornton now claims the sexual assaults were the result of the prison's poor supervision, inadequate training of correctional officers, and deliberate indifference to, or a settled custom of, inappropriate familiarity between the prison inmates and its correctional officers. In addition, Thornton alleges Watson violated her Eighth Amendment rights by using excessive force and subjecting her to cruel and unusual punishment.

## II STANDARD of REVIEW

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). An issue is “genuine” if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is “material” if it might affect the outcome of the case under governing law. Id.

In this case, the defendants bear the initial responsibility of informing the court of the basis for their motions and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). While Thornton bears the burden of proof on a particular issue at trial, the defendants’ initial Celotex burden can be met simply by pointing out to the court that there is an absence of evidence to support Thornton’s case. Id. at 325. After the defendants have met their initial burden, Thornton’s response, by affidavits or otherwise as provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. Fed. R. Civ. P. 56(e). That is, summary judgment is appropriate if Thornton fails to rebut the defendants’ assertions by making a factual showing sufficient to establish the existence of an element essential to her case, and on which she will bear the

burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. at 322. Under Rule 56, the court must view the evidence presented on the motion in the light most favorable to Thornton. Anderson v. Liberty Lobby, Inc., 477 U.S. at 255. If Thornton has exceeded the mere scintilla of evidence threshold and has offered a genuine issue of material fact, then the court cannot credit the defendants' version of events against Thornton, even if the quantity of the defendants' evidence far outweighs that of Thornton's. Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1363 (3d Cir. 1992).

### **III. DISCUSSION**

42 U.S.C. § 1983 provides a civil cause of action against any person who, acting under color of state law, deprives another of her constitutional rights. The constitutional right invoked by Thornton is in the Eighth Amendment's protection against cruel and unusual punishment.

#### A. Thornton's Claims Against the City and Warden Dunleavy

To prevail on her section 1983 claims against the City and Warden Dunleavy, Thornton must prove that her constitutional rights were violated as a result of a municipal policy or well-settled custom of deliberate indifference to the violation of those rights.

[A] local government may not be sued under section 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983.

Monnell v. Dep't of Soc. Servs., 436 U.S. 658, 694 (1978).

See also Simmons v. City of Philadelphia, 947 F.2d 1042, 1064 (3d Cir. 1991);<sup>2</sup> City of Canton, 489 U.S. 378 (1989). There must also be a direct link between the municipal policy or well-settled custom and the violation of Thornton's constitutional rights. Bd. of County Commissioners v. Brown, 520 U.S. 397, 404-05 (1997). Furthermore, it is Thornton's burden to show that a city policymaker is responsible for, or has acquiesced to, the well-settled custom. Jacobs v. City of Philadelphia, at 6-7, Civ. No. 03-0950, 2004 U.S. Dist. Lexis 24908 (E.D. Pa. 2004) (Baylson, J.). "Municipalities can only be found liable for violations of Section 1983 through the conduct of certain high ranking officials who have final policy making authority." Id. at 12, citing City of St. Louis v. Praprotnik, 485 U.S. 112, 123 (1988); Pembaur v. City of Cincinnati, 475 U.S. 469 (1986); and Simril v. Twp. of Warwick, Civ. No. 00-5668, 2001 U.S. Dist. Lexis 11725 (E.D. Pa. 2001) (Kelly, J.).

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<sup>2</sup>The Third Circuit language in Simmons gives direction in a section 1983 prisoner civil rights case:

In sum, based on Monell, Canton, and the Supreme Court's Pembaur trio, as well as on our decisions in Williams and in Andrews, I conclude that plaintiff, in order to have subjected the City to section 1983 liability under each of her theories, must have established the following. In order to establish the City's liability under her theory that Simmons's rights were violated as a result of a municipal policy or custom of deliberate indifference to the serious medical needs of intoxicated and potentially suicidal detainees, plaintiff must have shown that the officials determined by the district court to be the responsible policymakers were aware of the number of suicides in City lockups and of the alternatives for preventing them, but either deliberately chose not to pursue these alternatives or acquiesced in a longstanding policy or custom of inaction in this regard. As a predicate to establishing her concomitant theory that the City violated Simmons's rights by means of a deliberately indifferent failure to train, plaintiff must similarly have shown that such policymakers, likewise knowing of the number of suicides in City lockups, either deliberately chose not to provide officers with training in suicide prevention or acquiesced in a longstanding practice or custom of providing no training in this area.

To establish her claims, Thornton has presented two forms of evidence: 1) Watson's own statements, and 2) twenty-one (21) Internal Affairs investigations regarding "improper familiarity" between prison inmates and correctional officers. Watson's statements were acquired by Thornton through a personal declaration prepared by Thornton's counsel and signed by Watson, and a deposition of Watson. The statements relate to Watson's beliefs about the activities within the Prison.<sup>3</sup> The internal affairs reports go back five years and contain both unsubstantiated and substantiated grievances. At the September 26, 2005, oral arguments two questions were raised regarding this evidence: 1) whether Watson's statements are admissible against the City, and 2) whether this evidence rises to the level of a well established custom or policy facilitating, or demonstrating deliberate indifference to, the alleged sexual assaults of Thornton.

1. Are Watson's Statements Admissible Against the City?

Watson's statements have been presented in affidavit form. At trial, Watson would be able to testify about his observations of how the prison was run and what, if anything, the correctional officers could get away with doing. Although the alleged equivocal statement made by Warden Dunleavy to Watson<sup>4</sup> may be inadmissible hearsay

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<sup>3</sup>In particular Watson states that improper interactions between correctional officers and inmates is rampant, that the supervision of correctional officers is very lax and allows the officers to get away with smuggling contraband into the prison, and that none of the correctional officers get reprimanded for their misdeeds unless the public finds out.

<sup>4</sup>When notified that sexual assault charges had been filed by an inmate against Watson, Warden Dunleavy allegedly told Watson that "he better watch himself." Warden Dunleavy allegedly took no further action.

depending on the purpose for which it would be offered, Watson's statements would be admissible. For purposes of this motion for summary judgment, I accept Watson's statements as credible evidence as required under Anderson, and have considered them in my assessment of whether Thornton has presented a genuine issue of material fact.

2. Does Thornton's Evidence Rise to the Level Required by Monell?

Under Monell, Thornton must not only prove that an official policy or well-settled custom exists within the Prison that allows for sexual assault, but also that the alleged sexual assaults of Thornton occurred because of that policy or custom. Viewing Thornton's evidence in the light most favorable to her, she is unable to meet the Monell standard and has not shown any genuine issue of material fact as to that standard.

For Watson's statements to be considered as evidence of municipal liability, Watson would have to be a policy maker for the city. Jacobs, at 6-7. The City claims, and Thornton does not deny, that Watson is not a policymaker for section 1983 liability. His statements do not rise to the level of an admission by the City. Watson has no authority to speak on behalf of the City as it relates to the policies of the prison system. Furthermore, although it is alleged that Warden Dunleavy is a policymaker for the city,<sup>5</sup> no evidence has been given to support that claim. Thus, Dunleavy's statements to Watson, regardless of whether they are admissible, are irrelevant.

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<sup>5</sup>The defendants vehemently deny that Warden Dunleavy is a policymaker for the city, while counsel for Thornton at Oral Arguments simply assumed that he was a policymaker. Although the issue of whether Warden Dunleavy is a policymaker for the city, thus allowing him to subject the city to § 1983 liability, may have risen to a genuine issue of material fact had Thornton made any factual showing, Thornton has failed to do so.

As for the Internal Affairs investigations, only eight cited by Thornton occurred prior to the alleged sexual assaults. Of those eight, five were sustained as to the allegations of undue familiarity, only one contained allegations of a male correctional officer being unduly familiar with a female inmate, and none related to sexual assaults. This evidence does not come close to the level of a well-settled custom or policy allowing for sexual assaults. Furthermore, no evidence has been presented that a policy maker for the city acquiesced to undue familiarity between correctional officers and inmates. To the contrary, the evidence presented suggests the City takes allegations of undue familiarity very seriously by investigating each incident.

**B. Thornton's Claims Against Watson**

To establish a violation of 42 U.S.C. § 1983 against Watson, Thornton must prove that he acted "under color of state law" to deprive her rights, privileges, or immunities conferred by the Constitution or federal law. Monroe v. Pape, 365 U.S. 167, 184 (1961), rev'd on other grounds, Monell v. Dep't of Soc. Servs., 436 U.S. 658 (1978). As an on duty prison correctional officer, Watson was acting under the guise of state authority regardless that his alleged illegal acts were not committed pursuant to an established custom or policy. Monroe, at 186. See also West v. Atkins, 487 U.S. 42, 49-50 (1988) (prison physician acted under color of state law when treating an inmate, thus subjecting him to section 1983 liability). Furthermore, the alleged assault against Thornton would qualify as cruel and unusual punishment in violation of the Eighth Amendment. Griffin

v. Vaughn, 112 F.3d 703, 709 (3d Cir. 1997) (“The Eighth Amendment prohibits any punishment which violates civilized standards of humanity and decency” (citing Young v. Quinlan, 960 F.2d 351, 359 (3d Cir. 1992))). Thornton has therefore established a genuine issue of material fact regarding her claim against Watson.<sup>6</sup> This highlights the distinction between suing a person for 42 U.S.C. § 1983 violations in their individual versus their official capacity. Kentucky v. Graham, 473 U.S. 159, 165-67 (1985). Watson may be sued in his individual capacity.<sup>7</sup>

According to Watson’s motion for summary judgment, however, he is still not liable in this case because all of his debts were discharged pursuant to a bankruptcy hearing on April 11, 2005.<sup>8</sup> Assuming Watson is a debtor to Thornton, Watson’s liability to her would not be discharged because the alleged assault qualifies as willful and malicious conduct and therefore any liability imposed by Thornton’s section 1983 action would not be discharged in bankruptcy. See 11 U.S.C. § 523(a)(6) (“(a) A discharge

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<sup>6</sup>The main factual issue to be resolved is whether Watson assaulted Thornton.

<sup>7</sup>If argued that Warden Dunleavy was acting in his individual capacity, that argument would fail because no genuine issue of material fact has been presented that Warden Dunleavy individually violated Thornton’s constitutional rights. Similar to establishing liability for the City, Thornton needed to show Warden Dunleavy’s actions were the moving force behind the assaults. “[T]he standard of individual liability for supervisory public officials will be found to be no less stringent than the standard of liability for the public entities that they serve. In either case, a “person” is not the “moving force [behind] the constitutional violation” of a subordinate, City of Canton, 109 S. Ct. at 1205, unless that “person” -- whether a natural one or a municipality -- has exhibited deliberate indifference to the plight of the person deprived. See Lipsett v. University of Puerto Rico, 864 F.2d 881, 902 (1st Cir. 1988).” Sample v. Diecks, 885 F.2d 1099, 1118 (3d Cir. 1989). Consistent with the analysis above, Thornton’s evidence does not show Warden Dunleavy was indifferent to a risk of sexual assaults or that he established a well-settled custom, or policy that was the moving force behind the alleged sexual assaults.

<sup>8</sup>Watson was granted a discharge under section 727 of title 11 by Judge Kevin J. Carey, United States Bankruptcy Court, Case No. 05-10234 (E.D. Pa. 2005).

under section 727... of this title 11 U.S.C. § 727... does not discharge an individual debtor from any debt--(6) for willful and malicious injury by the debtor to another entity or to the property of another entity.”). See also In re Conte, 33 F.3d 303, 307 (3d Cir. 1994) (“We hold that actions are willful and malicious within the meaning of § 523(a)(6) if they either have a purpose of producing injury or have a substantial certainty of producing injury.”). Two alleged sexual assaults qualify as having a substantial certainty of producing injury.

#### **IV. CONCLUSION**

Thornton has failed to establish a genuine issue of material fact as to her section 1983 claims against Warden Dunleavy, and the City of Philadelphia. No evidence has been presented that a policymaker acquiesced, or was deliberately indifferent to a well-settled custom or policy allowing the alleged sexual assaults to occur. Conversely, Thornton has alleged sufficient facts for her section 1983 claim against Watson to survive summary judgment. While Watson was not acting pursuant to a well-settled custom or policy, he was acting under color of state law at the time of the assaults. I therefore grant the motions for summary judgment as to Thornton’s 42 U.S.C. § 1983 claims against the City of Philadelphia, and Warden Dunleavy, but not as to Watson. An appropriate order follows.



Philadelphia and Warden Dunleavy's motion (Docket number 19) is GRANTED. Defendant Watson's motion for Summary Judgment (Docket number 20) is DENIED. The plaintiff's 42 U.S.C. § 1983 claims against the City of Philadelphia and Warden Dunleavy are hereby dismissed with prejudice.

BY THE COURT

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LAWRENCE F. STENGEL J.