

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

Earl H. Andrews,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
	:	
v.	:	
	:	
	:	
C.O.I.M. Grabowski, et. al.,	:	
	:	
Defendants.	:	No. 95-7781
	:	

MEMORANDUM AND ORDER

Plaintiff, Earl H. Andrews, a state prisoner confined at the State Correctional Institution at Graterford, brought this civil rights action, under 42 U.S.C. Section 1983, seeking damages for injuries he allegedly received when a fellow inmate assaulted him. From September 29 through September 30, 1997, I presided over the trial of this action before a jury. At the conclusion of the trial, the jury returned a verdict for plaintiff in the total amount of \$5,000.¹ Defendants have filed a Motion for Judgment as a Matter of Law pursuant to Federal Rule of Civil Procedure 50(b), or in the alternative, a Motion for a New Trial pursuant to Federal Rule of Civil Procedure 59.²

1 The jury awarded compensation damages in the amount of \$1,000.00 (\$250.00 against defendants, Moore and Grabowski, and \$500.00 against defendant, Vaughn). The jury awarded punitive damages in the amount of \$4,000.00 (\$1,000.00 against Moore and Grabowski and \$2000.00 against Vaughn).

2 It should be noted that plaintiff has failed to order a full transcript as required by Local Rule of Civil Procedure 7(e). Although this would constitute grounds to dismiss

Defendants' Motion for Judgment as a Matter of Law will granted as to defendant, Donald T. Vaughn, and denied as to defendants, James Moore and Michael Grabowski. Defendants' Motion for a New Trial will be denied.

I. INTRODUCTION

Plaintiff, Earl H. Andrews, a state prisoner confined at the State Correctional Institution at Graterford, brought this action against Superintendent Donald Vaughn, Corrections Officer James Moore, and Corrections Officer Michael Grabowski, all employees of the Commonwealth of Pennsylvania, Department of Corrections assigned to the State Correctional Institution at Graterford (Graterford). Andrews alleges that the defendants violated his constitutional rights when a fellow inmate assaulted him in the exercise yard.

On July 24, 1995, Andrews was in administrative custody in M-Unit at Graterford pending transfer to another prison. Andrews and another inmate, Stephen Mills, who was in disciplinary custody, were escorted by Officer Moore to an exercise yard. Both Andrews and Mills were handcuffed. After Andrews and Mills were placed in the exercise yard and the gate locked, Mills' handcuffs were removed by Officer Moore through a small hole in the gate.

While Andrews was still in handcuffs, Mills attacked Andrews by kicking and punching him. Following the attack, Mills, on

plaintiff's post-trial motions, I have decided to excuse plaintiff from this requirement and consider plaintiff's post-trial motions.

orders from defendant Grabowski, returned to the gate where he was again placed in handcuffs. Andrews was taken to the infirmary for medical treatment.

II. LEGAL STANDARD

A. Motion for Judgment as a Matter of Law

Defendants have moved for the entry of judgment as a matter of law pursuant to Federal Rule of Civil Procedure (F.R.C.P.) 50(b). A motion for judgment as a matter of law, "should be granted only if, viewing the evidence in the light most favorable to the nonmovant and giving it the advantage of every fair and reasonable inference, there is insufficient evidence from which a jury could reasonably find liability." Lightning Lube, Inc. V. Witco Corp., 4 F.3d 1153, 1166 (3d Cir. 1993). Although a mere scintilla of evidence is not enough to sustain a verdict of liability, the question is whether there is sufficient evidence upon which a jury could properly find a verdict for the prevailing party. Id. at 1166.

B. Motion for a New Trial

Defendants have moved in the alternative for a new trial, pursuant to F.R.C.P. 59. "The decision to grant or deny a new trial is confided almost entirely to the discretion of the district court." Blancha v. Raymark Industries, 972 F.2d 507, 513 (3d Cir. 1992). Rule 59(a) of the Federal Rules of Civil Procedure provides for the granting of a new trial after a jury trial, but does not enumerate the grounds on which a new trial may be granted. To constitute proper grounds for granting a new trial, an error, defect, or other act must effect the substantial

rights of the parties. Fed. R. Civ. P. 61.

A district court may order a new trial if the verdict is too large or small, if the conduct of counsel has tainted the verdict, or if there has been a prejudicial error of law. Maylie v. National R.R. Passenger Corp., 791 F. Supp. 477, 480 (E.D. Pa. 1992)(citing 11 Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 2805 (1973)). In reviewing a motion for a new trial, the court must "view all the evidence and inferences reasonably drawn therefrom in the light most favorable to the party with the verdict." Marino v. Ballestas, 749 F.2d 162, 167 (3d Cir. 1984)(citation omitted).

III. ANALYSIS

A. Judgment as a Matter of Law

Defendants move for Judgment as a Matter of Law on the jury's finding that plaintiff's civil rights were violated by Superintendent Vaughn, Corrections Officer Moore, and Corrections Officer Grabowski. The defendants argue that, viewing the evidence in the light most favorable to the plaintiff, plaintiff failed to establish the necessary elements of a 42 U.S.C. Section 1983 claim at trial.

1. Donald T. Vaughn

A prison official's deliberate indifference to a substantial risk of serious harm to a prisoner violates the Eighth Amendment prohibition against cruel and unusual punishment. Farmer v. Brennan, 511 U.S. 825, 828 (1994). In order to establish a claim for failure to prevent harm, an inmate must prove that the inmate was incarcerated under conditions posing a substantial risk of

serious harm. Id. at 837. Second, an inmate must establish that the prison official knew of, and disregarded, an excessive risk to the inmate's health or safety. The official must be aware of facts from which the inference could be drawn that a substantial risk of harm exists, and the official must also draw such inference. Id. Defendants argue that plaintiff failed to present legally sufficient evidence to establish that Vaughn was aware of facts from which an inference could be drawn that plaintiff was exposed to a substantial risk of harm and that Vaughn, in fact, drew such inference.

In order to establish a viable claim under § 1983, the plaintiff must establish that each named defendant was personally involved in the alleged deprivation of the plaintiff's civil rights. See Rode v. Dellaricprete, 845 F.2d 1195, 1297 (3d Cir. 1988). The only evidence introduced by plaintiff to support liability on the part of Vaughn was a memorandum, dated January 27, 1995, bearing Vaughn's typed name and purported signature which was sent to Stephen Mills, the inmate assailant. See Plaintiff's Exhibit 1. The memorandum discussed Mills' large number of "misconducts" and his tendency for assaultive behavior. Vaughn testified that he had not read the memorandum until just prior to trial and that the memorandum was prepared and signed, using his name, by his assistant, Mr. LeFebvre.

Viewing this evidence and the inferences to be drawn from the evidence in the light most favorable to plaintiff, plaintiff failed to adduce legally sufficient evidence at trial to support

liability on the part of Vaughn. While the jury may not have believed Vaughn's account of how his signature became affixed on the memorandum and the jury may have concluded from circumstantial evidence that he knew of Mills' assaultive propensity, this would not be legally sufficient to impose liability. No evidence was presented from which the jury could conclude that Vaughn was aware of facts from which an inference could be drawn that plaintiff was exposed to a substantial risk of serious harm from Mills and that Vaughn, in fact, drew such an inference. Absent these essential elements there can be no "deliberate indifference."

Plaintiff argues that Vaughn was deliberately indifferent to the alleged failure of Officers Moore and Grabowski to follow Administrative Custody Procedure 802, which appears to establish a policy of separating prisoners in administrative custody from those in disciplinary custody.³ However, absolutely no evidence was presented that Vaughn knew, was aware of, or acquiesced to any alleged violation of Procedure 802. The fact that the jury may have believed that Vaughn knew of Mills' alleged violent propensity would not alone constitute deliberate indifference on his part. Unless evidence, either direct or circumstantial, was presented that Vaughn knew, was aware of, or acquiesced to any violation of established procedures on the part of Officers Moore

³ A reading of Procedure 802, introduced into evidence as Exhibit P-3, only appears to establish a general policy of separating prisoners in administrative custody from those in disciplinary custody, but does not mandate separation.

and Grabowski, the jury could not properly conclude that Vaughn was deliberately indifferent to a substantial risk of harm to plaintiff.

Absent such evidence of actual knowledge, acquiescence, or personal involvement in the alleged violation of Procedure 802 the only possible basis for any liability on the part of Vaughn would be pursuant to a doctrine of respondeat superior. However, the mere fact that Vaughn was the Superintendent of the prison is not sufficient to impose liability. The doctrine of respondeat superior does not apply under § 1983 and the fact that a named defendant is in a supervisory position will not alone support liability. Monell v. Dept. of Social Services, 436 U.S. 650, 694 (1978).

Viewing the evidence and the inferences to be drawn from the evidence in the light most favorable to plaintiff, I find that the jury's verdict against Vaughn was not supported by legally sufficient evidence adduced at trial. Accordingly, I will grant defendant's Motion for Judgment as a Matter of Law as against Superintendent Vaughn.

2. Correction Officers Grabowski and Moore

Defendants have also moved for Judgment as a Matter of Law as to Correction Officers Moore and Grabowski arguing that, viewing the evidence in the light most favorable to the plaintiff, plaintiff failed to establish that Moore and Grabowski were deliberately indifferent to a substantial risk of serious harm to plaintiff at the hands of Mills. At trial, plaintiff

established that Moore and Grabowski were both working in M-Unit on the day of the incident. The evidence also established that on the day of the incident, plaintiff was in administrative custody and Mills was in disciplinary custody.⁴

Moore and Grabowski testified that they could not and did not differentiate an inmate's custody status simply by looking at him because all of the inmates in the M-Unit wore the same type of clothing; and that they did not know of the status of the two inmates.

Viewed in a light most favorable to plaintiff, this evidence is not legally sufficient to establish deliberate indifference. While placing an inmate in disciplinary custody in the same exercise yard as an inmate in administrative custody may or may not have constituted negligence, it is clearly not sufficient to establish deliberate indifference. Deliberate indifference entails something more than mere negligence and requires that a prison official be aware of facts from which the inference can be drawn that a substantial risk of serious harm exists, and the prison official must draw the inference. Farmer, 511 U.S. at 827.

No evidence was presented at trial to establish that Moore or Grabowski drew the inference that plaintiff was exposed to a

⁴ The evidence presented at trial was unclear exactly why or how plaintiff came to be in administrative custody. However, plaintiff did testify that he had been transferred from disciplinary custody to administrative custody shortly before the incident occurred.

substantial risk of serious harm as he was placed in the exercise yard. Even if the jury did not believe the testimony that Moore and Grabowski were not aware of the respective custody status of Andrews and Mills, this, without more, would not impose liability on Moore and Grabowski under 42 U.S.C. § 1983. Absolutely no evidence was presented from which it could be inferred that Moore or Grabowski drew or should have drawn the inference that Mills would attack plaintiff if placed in the exercise yard with him. There was no testimony by anyone that would have suggested that Mills would attack Andrews. Plaintiff testified that he did not object to being placed in the exercise yard with Mills. Plaintiff also testified that he did not know Mills and had no idea why Mills attacked him. Mills testified that the only reason he attacked plaintiff was so he would be let out of the exercise yard.

Viewed in the light most favorable to the plaintiff, this evidence fails to establish that the assault was anything more than a random attack that could not have been anticipated or prevented. No evidence was presented to suggest that Moore or Grabowski anticipated or knew that the attack would occur. There was no evidence from which they could have drawn the inference that plaintiff was being exposed to a substantial risk of harm.

However, viewed in a light most favorable to the plaintiff, the evidence presented concerning the length of the attack was sufficient to support a finding of liability on the part of Moore and Grabowski. At trial, plaintiff testified that the attack

lasted between six (6) to eight (8) minutes. Officer Moore testified that, in his opinion, the attack lasted approximately thirty (30) seconds. Officer Grabowski testified that the attack lasted no longer than one (1) minute.

While corrections officers have no duty to endanger their own safety to stop a fight, they cannot stand by idly as inmates attack each other. Prosser v. Ross, 7 F.3d 1005, 1008 (8th Cir. 1995). Although Grabowski was not required to enter the exercise yard and attempt to stop the attack without assistance, plaintiff's testimony that Grabowski waited to call assistance while the attack continued for six (6) to eight (8) minutes would support a finding of deliberate indifference. The jury could properly conclude that Grabowski acted with deliberate indifference if he failed to promptly obtain assistance as the attack continued.

Plaintiff also testified that following the attack Officer Moore told him that he "got what you deserved." Although this alleged statement was made after the attack was over, the jury may have believed that it circumstantially proved that Moore was present as the attack continued and also failed to take any steps to intervene or obtain assistance.

If the jurors believed plaintiff's testimony, as it was their providence to do, this evidence was legally sufficient to support a finding of deliberate indifference. Accordingly, defendants' Motion for Judgment as a Matter of Law as to defendants Moore and Grabowski will be denied.

B. Motion for a New Trial

Defendants have moved in the alternative for a new trial, pursuant to F.R.C.P. 59, on two grounds: 1) the verdict was against the weight of the evidence; and 2) statements by plaintiff's counsel had a prejudicial effect on the jury's deliberations.

1. Verdict against the weight of the evidence

Defendants argue the verdict was against the weight of the evidence because the plaintiff failed to produce any evidence at trial from which the jury could conclude that Moore and Grabowski had the requisite state of mind to impose liability, i.e., deliberate indifference.⁵ As discussed above, plaintiff's testimony that Grabowski waited to call assistance while the attack continued for six (6) to eight (8) minutes would support a finding of deliberate indifference. A jury could properly conclude that Grabowski acted with deliberate indifference if he failed to attempt to obtain assistance as the attack continued.

The jury may have also believed that Moore's alleged statement that plaintiff "got what you deserved" circumstantially proved that Moore, despite Moore's testimony to the contrary, may have been present as the attack continued and that Moore also failed to take any steps to intervene or obtain assistance. A jury could properly conclude that Moore acted with deliberate

⁵ I need not address the defendant's argument that plaintiff also failed to establish that Vaughn had the requisite state of mind as I have already granted defendant's Motion for Judgment as a Matter of Law as to Vaughn.

indifference based on plaintiff's testimony.

There was legally sufficient evidence to support a finding of deliberate indifference. Accordingly, defendants' Motion for a New Trial as to defendants Moore and Grabowski will be denied.

2. Improper statements by plaintiff's counsel

Defendants also move for a new trial on the grounds that plaintiff's counsel made inappropriate statements in his closing statement that were prejudicial to the defendants and tainted the jury's deliberations. When improper conduct occurs during a trial, the proper test for determining whether that conduct requires a new trial is "whether the [conduct] made it `reasonably probable` that the verdict was influenced by prejudicial statements." Greate Bay Hotel & Casino v. Tose, 34 F.3d 1227, 1236 (3d Cir. 1994).

Defendants point specifically to plaintiff's counsel's statement during his closing argument, "Now, I would argue to you, members of the jury that deliberate indifference is when you have a rule that's in place, when you come to court and you admit, yes, the rule is in place and we did not follow them." Defendants' counsel timely objected, but at no time moved for a mistrial or requested a curative instruction to the jury.

Although plaintiff's counsel's statement was an incorrect statement of the law, the jury charge corrected any potentially serious errors or misstatements. I instructed the jury on the correct definition of deliberate indifference. So far as recall, no objection was raised to the charge nor was there any request

for supplemental instructions to correct the alleged misstatements by plaintiff's counsel.⁶

I conclude that it is not reasonably probable that plaintiff's attorney's statements affected the jury so as to produce a verdict tainted by prejudice. The jury heard this statement in the context of an otherwise proper closing argument and with the benefit of the court's instructions. Accordingly, defendant's Motion for a New Trial on these grounds will be denied.

IV. CONCLUSION

Based upon the foregoing, the defendants' Motion for Judgment as a Matter of Law will granted in part and denied in part, and defendants' Motion for a New Trial will be denied.

An appropriate order follows.

⁶ The charge was not ordered transcribed by defense counsel. This alone would be adequate grounds to deny the motion for a new trial.

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Earl H. Andrews,	:	CIVIL ACTION
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v.	:	
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	:	
C.O.I.M. Grabowski, et. al.,	:	
	:	
Defendants.	:	No. 95-7781
	:	

ORDER

AND NOW, this 30th day of October, 1997, for the reasons set forth in the accompanying memorandum, the judgment entered on the verdict on October 1, 1997 is **VACATED**.

It is **ORDERED** that, pursuant to Federal Rule of Civil Procedure 50(b)(1), judgment is entered as a matter of law in favor of the defendant, Donald T. Vaughn, and against the plaintiff, Earl W. Andrews.

It is further **ORDERED** that judgment is entered in favor of the plaintiff, Earl W. Andrews, and against the defendant, Michael Grabowski, in the sum of two hundred fifty dollars for compensatory damages and five hundred dollars punitive damages, and the defendant, James Moore, in the sum of two hundred fifty dollars compensatory damages and five hundred dollars punitive damages.

It is further **ORDERED** that the motion of the defendants for a new trial is **DENIED**.

BY THE COURT,

Donald W. VanArtsdalen, S.J.

October 30, 1997