

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

DION SELBY JORDAN,	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION
	:	
CITY OF PHILADELPHIA and	:	NO. 98-4320
YOUTH STUDY CENTER,	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, J.

March 20, 2000

I. BACKGROUND¹

The Defendant Youth Study Center (“YSC”) is a preadjudication detention facility maintained by the City of Philadelphia to house juvenile offenders. Individuals between the ages of 18 to 21 may be housed at YSC if they are picked up and detained on bench warrants related to offenses they allegedly committed as juveniles. When a resident is initially brought to YSC, the facilities admission procedures assign the resident to live on one of three floors. The older, more mature residents are placed on the fifth floor and the younger, less mature residents are placed on the third floor.

Plaintiff was a 15 year old resident of YSC in September and October of 1995.

The record indicates that he was a “playful, pudgy, little guy” while he was assigned to the third floor. As a result of a serious case of asthma, Plaintiff was eventually housed on the infirmary

1. The following facts are based on the evidence of record viewed in the light most favorable to Plaintiff, the non-moving party, as required when considering a motion for summary judgment. Carnegie Mellon Univ. v. Schwartz, 105 F.3d 863, 865 (3d Cir. 1997).

floor. While housed there, Plaintiff's sleeping quarters were not in a regular resident room of the type on the third floor, but rather in a make-shift room in the "shower room." The shower room was used for housing when there was an overflow of residents on the infirmary floor.

It was customary for the YSC staff to use house residents in the shower room once the regular rooms were filled. The decision of which residents would be placed in the shower room was determined by the amount of space or the overflow of residents in the infirmary floor. Essentially, once the regular rooms were filled, the next resident onto the infirmary floor was placed in the shower room.

The shower room was unlike the other rooms on the infirmary floor, in that, the beds were not visible through the window on the door. It was routine for the staff members to conduct "bed checks," however, because the beds were not visible from outside of the shower room door, the staff member would have to walk into the room in order to see residents lying in bed. Notwithstanding the fact that the shower room had no window to the outside so as to allow natural light to enter, the room was not equipped with a night light system as were the other rooms in the infirmary.

On October 3, 1995, YSC removed William Harris ("Harris") from the fifth floor to the infirmary floor. Harris was a 19 year-old adult resident who was being housed at YSC due to outstanding juvenile offenses. The record indicates that Harris was moved from the fifth floor once YSC determined that he could not be managed on that floor. On October 4, 1995, Harris began to masturbate in front of Plaintiff, grabbed Plaintiff by the neck and inserted his penis into Plaintiff's mouth. During the course of this act, Plaintiff attempted to fight Harris off, but Harris

yelled at him to “shut up” and increased the pressure around Plaintiff’s neck. Although Plaintiff requested a room change after the incident, his request was denied.

On October 5, 1995, Harris proceeded to masturbate in Plaintiff’s presence again, however, Plaintiff reacted by getting out of bed and knocking on the door for help. When a guard arrived, Harris jumped up and told the guard that he needed to see the nurse. Plaintiff was left alone and slept until Harris returned later in the night. Harris woke Plaintiff by placing his hands around Plaintiff’s mouth. Harris pulled Plaintiff’s pajamas down and proceeded to force anal sex on Plaintiff. Following this second incident, Plaintiff vomited daily, experienced rectal bleeding, felt dirty, had nightmares, suffered insomnia, was placed on sleeping medication and made several attempts at suicide.

Plaintiff has filed the instant Title 42 U.S.C. § 1983 action seeking compensation for the violation of his federally protected constitutional rights while a resident at YSC. He alleges that but for the policies and customs of YSC, such violations would not have occurred.

II. DISCUSSION

To maintain a cause of action under § 1983, a plaintiff must establish: (1) the alleged conduct was committed by a person acting under color of state law; and (2) the conduct deprived the plaintiff of rights, privileges and immunities secured by the Constitution or laws of the United States. See e.g., Hicks v. Feeney, 770 F.2d 375, 377 (3rd Cir. 1985). Section 1983 is not a source of substantive rights; it only provides “a method for vindicating federal rights elsewhere conferred.” Graham v. Connor, 490 U.S. 386, 393-94 (1989). Consequently, Section 1983 does not provide “a right to be free of injury wherever the State may be characterized as the

tortfeasor,” the plaintiff must show a deprivation of a federally protected right. Paul v. Davis, 424 U.S. 693 (1976).

Additionally, § 1983 claims against a municipality or its agency must allege: (1) the existence of a custom or policy of a municipality which is of such standing to have the force of law, and (2) that one of the municipality’s employees violated the plaintiff’s civil rights while acting pursuant to that policy or custom. See Monell v. Department of Soc. Servs., 436 U.S. 658 (1978). Liability of a municipal defendant cannot be established simply upon a respondeat superior theory. See id.

In the case at bar, it appears from the record that YSC’s custom was to house inmates in the shower room without concern for the disparity in age, size, maturity, and/or aggressiveness. Clearly, YSC was aware of the safety concerns when housing larger, more mature and more aggressive inmates with younger, less aggressive inmates. While it is not disputed that YSC did have a policy of separating mismatched inmates, it was customary for them to disregard that very policy and, as in the case at bar, house a 15 year-old inmate with a much larger, more mature and obviously aggressive 19 year-old. While the record is unclear whether or not YSC had the requisite “scienter-like” knowledge of Harris’ sexually deviant history, there is no dispute that Harris did have violent tendencies. YSC was aware of the disparity in Plaintiff’s and Harris’ ages and sizes. Moreover, Defendants were aware of the dangers of housing two inmates with such disparate characteristics. The record indicates that Harris was moved from the fifth floor once YSC determined that he could not be managed on that floor. Whether the policy-making authority was unaware of Harris’ violent tendencies,

whether sexual or not, and if so, whether it should have been aware of his tendencies, must be decided at trial. Therefore, Defendants' Motion for Summary Judgment will be denied.

An appropriate order follows.

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Defendants.	:	

ORDER

AND NOW, this 20th day of March, 2000, upon consideration of Defendants City of Philadelphia and Youth Study Center's Motion for Summary Judgment (Docket No. 20), and Plaintiff Dion Selby Jordan's response thereto, it is hereby ORDERED and DECREED that said Motion is DENIED.

It is further ORDERED that:

- (1) The parties are to submit all pretrial memoranda and any motions in limine within ten (10) days of the date of this Order; and
- (2) Within the same time period, counsel are to contact the Courtroom Deputy with their respective trial availability.

BY THE COURT:

RONALD L. BUCKWALTER, J.