

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

CHARLES ALAN JOHNSON	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	NO. 97-6605
v.	:	
	:	
ALLEN NESBITT, Warden	:	
and COLLEEN NEAL, Sergeant,	:	
	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, J.

June 5, 2000

Presently before the Court is the Defendants' Motion for Summary Judgment. For the reasons stated below, the Motion is Granted.

I. BACKGROUND

This action arises from a *pro se* Complaint originally filed on October 27, 1997. The Complaint alleges that Plaintiff Charles Alan Johnson was assaulted by members of the Certified Emergency Response Team ("CERT") in his cell at the Bucks County Correctional Facility on April 13, 1996.¹ This assault, which was carried out under the direction of Sergeant Colleen Neal, Plaintiff alleges, left him with serious and permanent injuries. On several occasions subsequent to the assault, Plaintiff was placed in solitary confinement for mental health care purposes. The Plaintiff seeks damages under 42 U.S.C. § 1983 for violations of his constitutional rights under the Eighth Amendment.

1. The CERT is a specialized unit trained to handle situations such as inmate disturbances. When activated, members wear protective clothing including Kevlar helmets. The decision to activate the CERT would have been made by Lieutenant Morissey, Sgt Neal's supervisor at the facility.

II. LEGAL STANDARD

Rule 56 allows the trial court to grant summary judgment if it determines from its examination of the allegations in the pleadings and any other evidential source available that no genuine issue as to a material fact remains for trial, and that the moving party is entitled to judgment as a matter of law. The purpose of the rule is to eliminate a trial in cases where it is unnecessary and would only cause delay and expense. Goodman v. Mead Johnson & Co., 534 F.2d 566,573 (3d. Cir. 1976). In evaluating a summary judgment motion, the court may examine the pleadings and other material offered by the parties to determine if there is a genuine issue of material fact to be tried. Fed. R. Civ. P. 56(c); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). Movant “bears the initial responsibility of informing the court of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any which it believes demonstrate the absence of a genuine issue of material fact”. Celotex, 477 U.S. at 323. When movants do not bear the burden of persuasion at trial, they need only point to the court that there is an absence of evidence to support the nonmoving party’s case. Id. at 325. Not every disputed fact, but only those which are material, necessitate a trial. A fact is material if it might affect the outcome of the suit under the governing substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). Summary judgment motions require judges to assess on a case by case basis how one-sided evidence is or what a fair-minded jury could reasonably decide. See Williams v. Borough of West-Chester, Pa., 89 F.2d 458 (3d Cir. 1989) (Plaintiff’s presentation of “some” evidence is not necessarily enough to survive summary judgment).

III. DISCUSSION

To make out a cause of action under § 1983, a plaintiff must show that (1) the defendants acted under color of law; and (2) their actions deprived him of rights secured by the Constitution or federal statutes. See Kost v. Kozakiewicz, 1 F.3d 176, 184 (3d Cir.1993). In this case, the Defendants were acting under color of law as they were both government officials at the time of the alleged violation. Therefore, the issue is whether the Defendants deprived Plaintiff of any constitutionally protected right.

The Eighth Amendment is the primary source of substantive protection for convicted inmates in excessive force claims. See Whitley v. Albers, 475 U.S. 312, 327, 106 S.Ct. 1078, 1088 (1986). Only the "unnecessary and wanton infliction of pain" constitutes cruel and unusual punishment forbidden by the Eighth Amendment. Id. at 319, 106 S.Ct. at 1084. Whenever an inmate accuses prison officials of using excessive force in violation of the Cruel and Unusual Punishments Clause the court must determine " 'whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.' " Id. at 320-21, 106 S.Ct. at 1085. In order to make this determination the court may consider the need for the application of force, the extent of the injury inflicted upon the inmate, the threat reasonably perceived by the corrections officials, and "any efforts made to temper the severity of a forceful response." Id. at U.S. at 321, 106 S.Ct. at 1085.

The Defendant has provided uncontroverted evidence that Sergeant Neal and the CERT team applied force in a good faith effort to restore discipline. The deposition testimony shows that prison officials asked Plaintiff to stop creating a disturbance three times before action was taken to control him. Sgt. Neal had entered the Restricted Housing Unit ("RHU") in an

attempt to have Plaintiff cease his disturbance prior to bringing the CERT team into Plaintiff's cell. Only upon the Plaintiff's refusal did Sgt. Neal return with the CERT. Sgt. Neal asked Plaintiff to submit to handcuffs, which he refused to do. Only then did the CERT enter the cell and force him into restraints. Sgt. Neal testified that Plaintiff was standing on his bed ready to fight the CERT when they entered the cell. While Plaintiff claims he was standing in the center of the room, he never denies resisting attempts to subdue him. Therefore, especially in light of Plaintiff's past, that included physical altercations with other inmates, Sgt. Neal was justified in her belief that force would be needed to restrain Mr. Johnson.

Plaintiff admits that he remembers very little of the scuffle that ensued, as he was rendered unconscious at some point. When he came to, Plaintiff recalls the discomfort of finding himself in restraints. Although Plaintiff can not remember the exact time he spent under restraint, he admits that it was not excessively long (no more than a few hours). Plaintiff has provided no medical records of his injuries. Defendants admit that Plaintiff received some cuts and bruises from the incident, but these injuries do not suggest force that was applied maliciously for the very purpose of causing Plaintiff harm. The "blindness" to his eye that Plaintiff complains of was not medically examined until four months after the incident. Plaintiff has failed to make a causal connection between his "blindness" and the incident on April 13, 1996. In light of the force used, the perceived threat posed by Plaintiff, and the injuries inflicted, the Court finds as a matter of law that Plaintiff has not been subjected to cruel and unusual punishment in violation of the Eighth Amendment.²

2. The Plaintiff also seems to be claiming that his being placed in the Restricted Housing Unit instead of the Mental Health Unit ("MHU") was a violation of the Eighth Amendment. As explained to the Plaintiff by prison officials, (continued...)

IV. CONCLUSION

The Plaintiff has failed to allege a violation of the Eighth Amendment to support his claim under § 1983. Therefore, summary judgment will be entered in favor of the Defendants.

An appropriate order follows.

(...continued)

this policy was instituted to relieve overcrowding in the MHU. Although this Policy was not to his liking, the Court can not find any evidence that placing Plaintiff in the RHU was cruel and unusual punishment.

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ALLEN NESBITT, Warden	:	
and COLLEEN NEAL, Sergeant,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 5th day of June, 2000, upon consideration of the Defendants' Motion for Summary Judgment (Docket No. 27), and the Plaintiff's Response thereto (Docket No.29); it is hereby **ORDERED** that Defendants' Motion is **GRANTED** and that Summary Judgment is entered in favor of the Defendants and against the Plaintiff.

This case may be marked as Closed.

BY THE COURT:

RONALD L. BUCKWALTER, J.