

IN THE SUPERIOR COURT OF THE STATE DELAWARE

IN AND FOR KENT COUNTY

DAVID B. SULLY,	)	
	)	C.A. No. K11C-06-029 JTV
Plaintiff,	)	
	)	
v.	)	
	)	
CARL C. DANBERG, COMMISSIONER,	)	
DEPARTMENT OF CORRECTION,	)	
CATHY ESCHERICH, and MICHAEL	)	
C. BRITTINGHAM,	)	
	)	
Defendants.	)	

Submitted: January 9, 2013

Decided: April 29, 2013

David Sully, *Pro se*.

Marc P. Niedzielski, Esq., Department of Justice, Wilmington, Delaware.
Attorney for Defendant Danberg.

Catherine Damavandi, Esq., Department of Justice, Wilmington, Delaware.
Attorney for Defendant Escherich.

Michael F. McTaggart, Esq., Department of Justice, Wilmington, Delaware.
Attorney for Defendant Brittingham.

*Upon Consideration of Defendants’
Motion for Summary Judgment*
GRANTED

VAUGHN, President Judge

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OPINION

In this civil action, the plaintiff, David Sully, seeks damages for alleged violations of his civil rights that occurred while he was an inmate at Sussex Correctional Institution (“SCI”). At the time of the events of this case, defendant Carl Danberg was the Commissioner of the Department of Correction (“DOC”), defendant Cathy Escherich was the Director of Central Offender Records, and defendant Michael Brittingham was the Warden at SCI. All of the defendants have moved for summary judgment pursuant to Superior Court Civil Rule 56.

FACTS

On June 27, 2009, the plaintiff was arrested by Officer Hitches of the Laurel Police Department pursuant to an arrest warrant obtained after the plaintiff reportedly spun the tires of a car that he was operating, causing stones to fly up and crack the windshield of a parked vehicle. The plaintiff was taken to the Laurel police station, where he refused to be fingerprinted and photographed, because he believed that the incident with which he was charged warranted no more than a traffic citation. He was then taken to the Justice of the Peace Court. That court set bond at unsecured and ordered the plaintiff be taken to SCI to be fingerprinted and photographed. The plaintiff arrived at SCI on June 27 at 4:34 p.m. The complaint sets forth in detail alleged acts of abuse that the plaintiff alleges were inflicted upon him by correctional officers after his arrival at SCI. In short, the plaintiff alleges that he was assaulted by correctional officers shortly after he arrived at SCI, as well as two more times on June 28 at 2:30 a.m. and 9:30 a.m.

On June 28, 2009 at 1:08 p.m., the Justice of the Peace Court faxed an order

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to the SCI directing that the plaintiff be released.¹ The plaintiff was released from SCI that same day at 2:15 p.m. He was then transported by correctional officers to Beebe Medical Center (“BMC”) for a medical examination and treatment. After the plaintiff was admitted to the hospital, the correctional officers left, but the plaintiff alleges that he was kept “under guard” by two police officers until he was discharged from BMC after receiving treatment.

The plaintiff filed a complaint against the defendants under 42 U.S.C. §1983 alleging that he was over-detained and assaulted in violation of his due process and equal protection rights and his right to be free from cruel and unusual punishment. Specifically, the plaintiff alleges that defendants Danberg and Brittingham are liable for the alleged assaults and over-detention that he suffered, and that defendant Escherich is liable under the over-detention claim.

All of the defendants have moved for summary judgment on the grounds that they cannot be held liable under 42 U.S.C. §1983 for the plaintiff’s alleged civil rights violations, because they served in supervisory positions only and had no personal knowledge of the plaintiff, and that this case is controlled by this Court’s decision in *Carta v. Danberg*,² which was recently affirmed by the Delaware Supreme

¹ That order stated:

DAVID B SULLY who is in your custody under Commitment signed by Court No 3, on the 27 day of June 2009 has met his obligation by posting bond and/or paying fine and costs due.

We hereby direct that he be released from your custody upon the presentation of this order.

² 2012 WL 1537167 (Del. Super. Apr. 30, 2012), *aff’d Carta v. Danberg*, 2012 WL6708410 (Del. Dec. 26, 2012).

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Court on December 26, 2012.³

STANDARD OF REVIEW

Summary judgment should be granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.⁴ The moving party bears the burden of establishing the non-existence of material issues of fact.⁵ If a motion is properly supported, the burden shifts to the non-moving party to establish the existence of material issues of fact.⁶ In considering the motion, the facts must be viewed in the light most favorable to the non-moving party.⁷ Thus, the Court must accept all undisputed factual assertions and accept the non-movant's version of any disputed facts.⁸

DISCUSSION

As this Court stated in *Carta*:

A State employee cannot be liable under 42 U.S.C. § 1983 merely because those under his supervision violate the constitutional rights of another. Instead, the State officer can only be liable in a supervisory position if he was the moving force behind the constitutional violation, or

³ *Carta v. Danberg*, 2012 WL 6708410 (Del. Dec. 26, 2012).

⁴ Super. Ct. Civ. R. 56(c).

⁵ *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

⁶ *Id.* at 681.

⁷ *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 99 (Del. 1992).

⁸ *Sztybel v. Walgreen Co.*, 2011 WL 2623930, at *2 (Del. Super. June 29, 2011).

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exhibited deliberate indifference to the plight of the person deprived. While supervisory liability does exist under Section 1983, it is based on actual knowledge and acquiescence and not *respondeat superior*.⁹

With regard to the plaintiff's allegations that defendants Danberg and Brittingham are liable for the alleged assaults that took place while he was at SCI, the plaintiff does not allege that the defendants were present during the alleged assaults. They are clearly supervisory officials.

Identically to the allegations made by the plaintiff in *Carta v. Danberg*, the plaintiff here alleges that:

Defendant Danberg [and Brittingham] had actual knowledge that a culture of violence existed at SCI in which C/Os, without justification, frequently physically abused inmates who displeased them in any way, especially if the inmates were smaller and weaker than them, or impaired by intoxication. Some such cases of which Defendant Danberg was aware include *Bishop v. Taylor, et al.*, C.A. No.: 07C-07-040 RBY; *Kalm v. Kearney, et al.*, C.A. No.: 08C-09-048 RBY; *Bramble v. Nelson*, C.A. No.: 07C-10-030 JTV; and the case of Marc Nelson, who appeared at the intake at SCI in 2007 in a highly intoxicated state, such that he could barely stand or open his eyes. Because he was incapable of following the instructions of the C/Os, they beat him, pepper sprayed him and allowed their dog to bite him.

In *Carta*, this Court held that “[b]earing in mind the standard of liability under

⁹ *Carta*, 2012 WL 1537167, at *2 (citations and internal quotation marks omitted).

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42 U.S.C. § 1983 . . . , I conclude that the existence of a few cases of alleged inmate abuse over the period of time involved here, accepted as true, is, without more, insufficient to plead a claim against the defendants upon which relief can be granted under 42 U.S.C. § 1983.”¹⁰ Although the motion in issue in *Carta* was a motion to dismiss, it is clear that the defendants in this case are entitled to summary judgment under the same reasoning.¹¹ The cases mentioned in the complaint are insufficient to show that the defendants had an actual knowledge of a “culture of violence” and that they were deliberately indifferent or acquiesced to the alleged violation of the plaintiff’s constitutional rights.¹² Therefore, defendants Danberg and Brittingham are entitled to summary judgment with respect to the plaintiff’s claims that arise out of the alleged assaults that took place at SCI.

With regard to the over-detention allegation against all three defendants, the plaintiff alleges that he was detained for over 24 hours at SCI and BMC, and that he should have been released immediately after being fingerprinted and photographed at SCI.

The record indicates that an initial intake screening was completed by an LPN at 5:33 p.m. after the plaintiff’s admission to SCI at 4:34 p.m. The plaintiff alleges that he was photographed and fingerprinted about 15 or 20 minutes before that. A

¹⁰ *Id.* at *3.

¹¹ *See Doe v. Cahill*, 884 A.2d 451, 459 (Del. 2005) (noting that the motion to dismiss standard is a less stringent standard for plaintiffs to overcome than the summary judgment standard).

¹² *See Collins v. Figueira*, 2006 WL 1817092, at *3 (Del. Super. June 23, 2006).

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medical note was created at 6:33 p.m. in which an LPN noted that the plaintiff was paranoid and said he would hurt himself to get out. The LPN attempted to refer the plaintiff for a mental health consultation, but no psychiatrist or psychologist was available at SCI on the weekend. He was then apparently designated a Level II inmate at 7:00 p.m. and admitted to room 83. A series of medical notes were generated which continued up until approximately noon the following day. As mentioned, the plaintiff was released at 2:15 p.m. after receipt of the order from the JP Court. In his complaint, the plaintiff alleges that correctional officers told him that the problem getting him released was with “records.” The plaintiff alleges that defendant Escherich had actual knowledge that inmates were frequently over-detained beyond their release date. As discussed in *Carta*, however, the cases which the plaintiff there, as well as the plaintiff here, rely upon are cases which involved sentenced Level V inmates, not pre-trial detentions. Calculation of release dates for sentenced inmates is not involved here.

The weekend in question also happened to be one in which DOC was transferring its record keeping duties from the individual institutions to the Central Offender Records Office in Dover. The plaintiff alleges that the defendants failed to prepare adequately for release of persons admitted during that weekend who should have been released before the weekend was over.

It is clear that all three defendants are sued in a supervisory capacity. There is no evidence that any of them were aware that a person admitted for fingerprinting and photographing would be held overnight. The plaintiff cannot establish that any of the three defendants was the moving force behind any constitutional violation or

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exhibited deliberate indifference to the defendant's plight. When the JP Court did order his release the next day, he was processed out of the institution in a timely manner. I find that the defendants are entitled to summary judgment with respect to the plaintiff's over-detention claim.

Therefore, the defendants' Motion for Summary Judgment is ***granted***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

oc: Prothonotary
cc: Order Distribution
File