IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NATHANIEL BAGWELL,	)	
	)	
Plaintiff,	)	
v.	)	Case No. 99-412 GMS
	)	
RAPHAEL WILLIAMS, PERRY, PHELPS, and BOVELL,	)	
	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

I. INTRODUCTION

The *pro se* plaintiff, Nathaniel Bagwell ("Bagwell"), is currently incarcerated at the Multi-Purpose Criminal Justice Facility in Wilmington, Delaware. On June 29, 1999, he filed the above-captioned action against Warden Raphael Williams ("Williams"), Security Superintendent Perry Phelps ("Phelps"), and Correctional Officer Robert I. Bovell, Jr. ("Bovell") pursuant to 42 U.S.C. § 1983.

Presently before the court is Bovell's motion for summary judgment. For the reasons that follow, the court will grant the motion.

II. STANDARD OF REVIEW

The court may grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the 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); *see also Boyle v. County of Allegheny, Pennsylvania*, 139 F.3d 386, 392 (3d Cir. 1998). Thus, the court may grant summary judgment only if the moving party shows

that there are no genuine issues of material fact that would permit a reasonable jury to find for the non-moving party. *See Boyle*, 139 F.3d at 392. A fact is material if it might affect the outcome of the suit. *Id*. (citing *Anderson v. Liberty Lobby*, *Inc.,* 477 U.S. 242, 247-248 (1986)). An issue is genuine if a reasonable jury could possibly find in favor of the non-moving party with regard to that issue. *Id*. In deciding the motion, the court must construe all facts and inferences in the light most favorable to the non-moving party. *Id*.; *see also Assaf v. Fields*, 178 F.3d 170, 173-174 (3d Cir. 1999).

With these standards in mind, the court will describe the facts and procedural history that led to the motion presently before the court.

III. BACKGROUND

The present action involves Bagwell's claims for mental and emotional distress and bodily harm suffered as a result of a correctional officer's alleged false statements against Bagwell. Specifically, he alleges that on April 24, 1999, Correctional Officer Bovell entered his housing area and said in a loud voice, which other inmates could hear, "Bagwell, I read the grievance and affidavit that you wrote on me that inmates be [sic] pushing buttons opening cell doors while I be [sic] playing cards." Bagwell alleges that, as a result of this statement, and immediately after it was made, the inmates in the housing area began taunting him and calling him a "snitch." He further alleges that the inmates said, "snitches get stitches." As a result, Bagwell claims he suffered mental and emotional distress and damage to his reputation. Finally, he contends that other inmates have since picked fights with him.

On February 21, 2001, the court entered an order dismissing Bagwell's claims against Williams and Phelps as frivolous, but permitting his claims against Bovell to proceed. On October

9, 2001, Bagwell then sought to amend his complaint to bring in additional claims against six other employees of the Department of Correction. By order dated January 31, 2002, the court conditionally granted his motion to amend, contingent upon his payment of full filing fees by March 4, 2002. As he did not pay the full $150.00 by March 4, 2002, the only claims that remain are those against Bovell.

IV. DISCUSSION

Bagwell alleges that Bovell loudly accused him of filing a grievance against him. In light of this allegation, Bovell argues that, since he is not charged with explicitly calling Bagwell a snitch, Bagwell's claim must fail. Bovell further argues that, to include his alleged actions in the definition of calling someone a snitch, would necessarily mean that any time an inmate provided information adverse to a correctional officer, such action would constitute "snitching." Under Bovell's theory then, any correctional officer who expressed displeasure at being the subject of a grievance could then be sued for labeling an inmate a snitch.

Bovell's argument, however, appears to miss the point. In the present case, Bagwell was allegedly labeled a snitch not because he filed a grievance against Bovell, but because in that grievance, he implicated the illegal actions of other prisoners. Once Bovell allegedly "informed" other prisoners that they had also been implicated in Bagwell's complaint, Bagwell's actions could reasonably be understood to have violated the informal prisoner "code of conduct".[1] Accordingly, the court concludes that Bovell's alleged statement would qualify as labeling Bagwell as snitch.

Bovell next argues that summary judgment is appropriate because there remain no genuine

[1]Generally speaking, prisoners understand the "code of conduct" to mean that inmates do not inform against fellow inmates, and correctional officers do not inform against fellow correctional officers.

issues of material fact. Here, the court must agree. First, Bagwell cannot recall the name of a single inmate who allegedly called him a snitch. He further admits that, since being moved off of the 2-Y pod over a year ago, no inmate has confronted him with any snitch accusations. Finally, he concedes that in the nearly three years following the alleged incident, not one inmate has attempted to assault him for purportedly being a snitch.

In *Miller v. Williams*, the Ninth Circuit stated that, "[in] a constitutional tort, as in any other, the plaintiff must allege that the defendant's actions *caused* injury to the plaintiff in order to establish a prima facie case." 1992 WL 225412, *1 (9th Cir. 1992) (emphasis in original). Applying that standard to the facts of the *Miller* case, the Ninth Circuit held that "Miller's complaint is fatally flawed because, aside from the harm to his reputation, he has failed to allege any particular injury caused by the allegedly unconstitutional retaliatory conduct of the defendants." *Id*.

Likewise, Bagwell has failed to provide evidence of any actionable harm caused to him by Bovell's alleged actions. Rather, he has alleged that he suffered mental distress, low self-esteem, a damaged reputation and the loss of good friends. While he does allege that Bovell's actions exposed him to "severe bodily harm," he has brought forth no evidence to bolster this allegation.[2] Nor has he pointed to any evidence that would demonstrate the requisite causal connection between Bovell's alleged actions and any subsequent threats or injuries. As such, a bare allegation of being exposed to bodily harm cannot save Bagwell's claims from summary judgment.[3] *See Quiroga v.*

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[2]At his deposition, Bagwell stated that no inmate has ever attempted to assault him. Thus, the court understands Bagwell's "severe bodily injury" allegation to mean threats of severe bodily injury.

[3]Bagwell claims that his deposition transcript was altered to impede his case. For example, he argues that lines 12 and 13 of page 8 were altered because the transcript reflects that he said "writing a grievance," when he actually said "wrote a grievance." The court concludes

Hasbro, 934 F.2d 497, 200 (3d Cir. 1991). In so holding, however, the court wishes to be clear that it is not granting summary judgment because Bagwell has not pointed to evidence of a significant injury, but rather, because he has failed to adduce evidence of any cognizable injury whatsoever.

V. CONCLUSION

Thus, the court concludes that, at most, some inmates, whose names Bagwell cannot remember, may have treated him less favorably than they had before April 24, 1999. Notably, he has not alleged that any inmate assaulted him as a result of the alleged statement. Although he has alleged that inmates threatened him, he cannot provide the name of even one such inmate, nor has he brought forth any other evidence of such incidents having occurred.

For these reasons, IT IS HEREBY ORDERED that:

1. Bovell's motion for summary judgment (D.I. 27) is GRANTED.

2. Judgment BE AND IS HEREBY ENTERED in favor of Bovell.

Dated: April 22, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE

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that, to the extent the transcript is, in fact, inaccurate, the examples he cites are minor and have no impact on the viability of his claims.