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

JOSEPH MARTIN RIDDLE, Plaintiff, v. ROBERT J. WAELTZ, OFFICER, et al., Defendants.	Civil Action No. 96-6337

M E M O R A N D U M

Gawthrop, J. November , 1997

Before the court, in this 42 U.S.C. § 1983 prisoner civil rights action, is a Motion for Summary Judgment filed by Defendants. Many of the facts are undisputed. On December 13, 1995, certain Horsham Township Police arrested Plaintiff Joseph Martin Riddle. At the police station that night, Defendant Officer Waeltz asked Mr. Riddle to remove his coveralls, zippered sweatshirt, and shoes, and when he refused to remove the sweatshirt, several police officers removed it for him. After spending the night in the holding cell, he was taken to Bucks County Hospital for severe arm pain and treated for a broken left arm.

Plaintiff alleges that some or all of the named defendants either used excessive force against him during the sweatshirt removal, or they stood by without attempting to interfere while

the other defendants battered him. Plaintiff further alleges that the defendants actionably deprived him of a decent amount of warmth by removing his sweatshirt and placing him in a cell with no heat.

Mr. Riddle contends the facts surrounding the sweatshirt removal were egregious: they "dragged" him to the floor, beating and kicking him, causing him to lose consciousness, injuring his head and arm, and trampling his right to due process through their excessive use of force.

I turn to the first claim. A law enforcement officer's infliction of personal injury on a person by the application of excessive force may deprive the victim of liberty without due process of law. See Curtis v. Everette, 489 F.2d 516, 518-19 (3d Cir.1973). In considering a motion for summary judgment, a court does not resolve factual disputes or make credibility determinations and must view facts and inferences in the light most favorable to the party opposing the motion. See Siegel Transfer, Inc. v. Carrier Express, Inc., 54 F.3d 1125, 1127 (3d Cir.1995). The defendants submitted a videotape of the de-shirting, which, they claimed, proved beyond any question that it was done with propriety. It is, however, readily apparent that certain material facts yet remain genuinely at issue. One simply cannot tell how the sweatshirt was removed from Mr. Riddle. Much of the sweatshirt removal took place off-camera, and thus, how that actually occurred cannot now be ascertained. Further, Plaintiff has filed an affidavit taken from a third party who

viewed the videotape, and who says that the sound portion of the submitted tape has been partially erased as well, expunging various nasty statements of Plaintiff's jailers. Serious facts are thus still at issue.

Going beyond the sweatshirt incident, it is yet factually unclear whether, and to what degree, the holding cell lacked heat on the evening in question. Mr. Riddle also asserts that the cell lacked a mattress and a blanket, thus subjecting him to cruel and unusual punishment. The absence of mattress and blanket the Defendants admit, though they claim that that was for safety reasons. They deny that the cell was cold. If the cell did not have heat or a blanket, and Mr. Riddle did not have his sweatshirt, such deprivation of a "single identifiable human need" such as warmth, may establish an Eighth Amendment violation. See Wilson v. Seiter, 501 U.S. 294, 304 (1991) (giving "a low cell temperature at night combined with a failure to issue blankets" as an example of confinement conditions that may violate the Eighth Amendment). To state a claim under § 1983, a plaintiff must allege that (1) the defendant deprived the plaintiff of a constitutional right, and (2) the defendant was acting under color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988). Here, there is enough to get past summary judgment.

Defendants Horsham Police Department, Horsham Township, the Mayor, the Township Council, and the Commissioners move for dismissal on Monell grounds. See Monell v. New York City Dept.

of Social Servs., 436 U.S. 658 (1978). To hold a municipality liable under § 1983: a plaintiff must show (1) that he was deprived of a constitutionally protected right, and (2) that an official policy or custom caused that deprivation. See 42 U.S.C. § 1983; Monell, 436 U.S. at 690. An official policy or custom includes a municipality's failure to train, supervise or discipline its employees when such failure evidences deliberate indifference to citizens' constitutional rights. See City of Canton v. Harris, 489 U.S. 378, 389 (1989). There is no § 1983 respondeat superior liability under Monell, unless the case falls within one of those exceptions. Monell, 436 U.S. at 691.

In his deposition, Mr. Riddle admits that he has no evidence demonstrating such a custom, policy or failure to train. The record speaks of but one incident, one occasion. I thus conclude that Plaintiff has failed to make out a case in this regard.

Defendants further ask that Officers Biggins, Raguera, and Ruxton be dismissed from this case, pointing to their Answers to Plaintiff's Interrogatories in which they deny any involvement in, or knowledge of, the alleged wrongdoing at the police station. Persons can be held liable under § 1983 only for their personal participation or knowing acquiescence with regard to the alleged constitutional violation. See Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir.1988). Defendants specifically aver that Officers Biggins and Raguera, as well as Chief Ruxton, were not present at the police station at the time of the incident and were not aware of the conduct of the others who were there. By

referring to their answers to interrogatories, the defendants have shifted the burden to the plaintiff to specify facts showing that a genuine issue exists regarding the named officers' involvement in the incident. Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986) (quoting Fed. R. Civ. P. 56(c) and holding that the moving party bears the initial burden of identifying "those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact.").

Beyond his allegations in the complaint, Plaintiff has failed to state any facts that show that defendants, Biggins, Raguera, and Ruxton, participated in or were in any way personally involved in the alleged wrongs. See Robinson v. City of Pittsburgh, 120 F.3d 1286, 1294 (3d Cir.1997) (citation omitted) ("A defendant in a civil rights action must have personal involvement in the alleged wrongs . . . ."). In responding to a motion for summary judgment, the non-moving party must "go beyond the pleadings and by [his or her] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing there is a genuine issue for trial." In re TMI,89 F.3d 1106, 1116 (3d Cir.1996) (citing Celotex Corp., 477 U.S. at 324 (1986)). The plaintiff here has not supplied any of the kinds of evidentiary materials listed in Rule 56(c), except the mere pleadings themselves, to support his allegations that the named officers were involved.

Celotex Corp., 477 U.S. at 324. In the absence of such factual allegations, the claims against these officers will be dismissed.

Finally, Defendants argue that they are entitled to qualified immunity, since there is no showing that their conduct violated clearly established statutory or constitutional rights of which a reasonable person would have known. See Grant v. City of Pittsburgh, 98 F.3d 116, 121 (3d Cir.1996)(citing Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982); Anderson v. Creighton, 483 U.S. 635, 636-37 (1987)). Although the qualified immunity defense is a question of law for the court to resolve, the answer to that question may depend upon the resolution of specific facts. See Anderson, 483 U.S. at 641; Karnes v. Skrutski, 62 F.3d 485, 491 (3d Cir.1995) ("This qualified immunity inquiry is an objective, fact-specific pursuit."). As stated above, the facts relevant to the alleged constitutional violations are still in dispute. See Wiers v. Barnes, 925 F.Supp. 1079, 1089 (D.Del.1996) ("The very facts going to the reasonableness of the defendants' behavior with respect to their conduct are not only in dispute, but leave far too many gaps to adequately assess their objective reasonableness."). Thus, the reasonableness of the officers' conduct, and whether they are entitled to qualified immunity, cannot be determined at this time, and summary judgment on this ground is inappropriate.

An order follows.

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

JOSEPH MARTIN RIDDLE, Plaintiff, v. ROBERT J. WAELTZ, OFFICER, et al., Defendants.	Civil Action No. 96-6337

O R D E R

AND NOW, this Day of November, 1997, upon the reasoning in the attached Memorandum, Defendant's Motion for Summary Judgment is GRANTED in part, and DENIED in part as follows:

1. In Civil Action No. 96-6337, Defendants Horsham Township, Horsham Township Police Department, the Mayor, the Township Council, the Commissioners, Chief Ruxton, Officer Biggins, and Officer Raguera are hereby DISMISSED as defendants;

2. Defendant's Motion for Summary Judgment on all other claims is DENIED.

BY THE COURT:

_____

Robert S. Gawthrop, III J.