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

DWAYNE HILL	**CIVIL ACTION**
v.	**NO. 96-1036**
C.O. JOHN KELLY	

M E M O R A N D U M

Broderick, J. **October 16, 1997**

Presently before the Court is a Motion for Summary Judgment filed by Defendant John Kelly, a prison guard at the State Correctional Institute at Graterford ("S.C.I. Graterford"). Plaintiff Dwayne Hill, an inmate at S.C.I. Graterford who is proceeding pro se, has filed a Response in opposition to Defendant's Motion. In his Response, Plaintiff Hill asks the Court to grant summary judgment in his favor. For the reasons which follow, the Court will grant Defendant's Motion for Summary Judgment, deny Plaintiff's Motion for Summary Judgment and enter Summary Judgment in favor of Defendant Kelly and against Plaintiff Dwayne Hill.

The instant action arises from Plaintiff's allegation that Defendant Kelly slammed a cell block door on Plaintiff's thumb. Plaintiff commenced the instant action pursuant to 42 U.S.C. § 1983, alleging a violation of his Eighth Amendment right to be free from cruel and unusual punishment. Plaintiff originally named Donald Vaughn, the Superintendent of S.C.I. Graterford, as

an additional Defendant; the Court dismissed Plaintiff's Complaint as against Defendant Vaughn in a prior Order.

In his Motion for Summary Judgment, Defendant Kelly avers that he does not remember the alleged incident in which he allegedly shut the door on Plaintiff's hand. Deft's Exhs. 2, 2-A. Plaintiff, however, has submitted an affidavit in which he relates the alleged factual circumstances surrounding the incident. Pltf's Exh. 1-A.

In light of the fact that Defendant Kelly has no memory of the alleged incident, many of Plaintiff's factual averments regarding the alleged incident are undisputed. These undisputed factual averments are as follows: At the time of the alleged incident, Plaintiff, an inmate at S.C.I. Graterford who suffers from asthma, had a pass which gave him permission to go to the prison dispensary when necessary in order to receive treatment for his asthma. On December 21, 1995, the date of the alleged incident, Plaintiff was having a mild asthma attack, and wanted to use his pass to go the dispensary. According to Plaintiff's affidavit, Plaintiff walked to the front door of the cell block. A small crowd of prisoners had gathered around the door in anticipation of being let out into the prison yard. Defendant Kelly was standing by the door preparing to release the prisoners into the yard. Plaintiff knocked on the front door and called Defendant Kelly. Defendant Kelly came over to the Plaintiff. Plaintiff told Kelly about his asthma problem, showed him his pass and asked to go to the dispensary. Defendant Kelly stated

that Plaintiff could not be released from the cell block until the other prisoners were let out into the yard. According to Plaintiff's affidavit, Defendant Kelly then proceeded to close the cell block door quickly, and the door closed on Plaintiff's right hand. According to Plaintiff's affidavit, Defendant Kelly then locked the door and smiled at Plaintiff "deviously."

Both Plaintiff Hill and Defendant Kelly have attached as an exhibit a Department of Corrections Medical Incident Report dated December 21, 1995. The Medical Incident Report states that Plaintiff received treatment for his thumb. Under the section labeled "Description of Injury," the report states that "'[a]n officer closed the block door on my thumb. I think it was an accident.'"

In addition to attaching the Medical Incident Report, Defendant Kelly attached to his Motion for Summary Judgment an affidavit by Donna Hale, a Corrections Health Care administrator at S.C.I. Graterford. In her affidavit, Ms. Hale interprets the notes written by the doctor who treated Plaintiff at the dispensary on December 21, 1995 (which notes are also attached as an exhibit to Defendant's Motion). According to Ms. Hale's affidavit, the doctor's notes state that Plaintiff had come in for treatment for his right thumb and had reported that a door had been "inadvertently slammed" on it. According to Ms. Hale's affidavit, the doctor's notes further state that Plaintiff had a cut on the back of his right thumb and a crushing bruise. The doctor's notes further state that Plaintiff was given 600

milligrams of Motrin and was offered an ice pack which Plaintiff refused.

Plaintiff in his affidavit specifically denies that he told anyone at the dispensary that Defendant Kelly accidentally or inadvertently closed the door on Plaintiff's thumb. Pltf's affidavit at ¶ 11. However, Plaintiff does not dispute the information in the doctor's notes relating to the nature and extent of Plaintiff's thumb injuries, or the treatment prescribed. Furthermore, Plaintiff has not provided any evidence that he received any additional treatment for his thumb. Although Plaintiff has attached to his Response a copy of two additional prescriptions for Motrin, dated October 1996 and January 1997, Plaintiff has not provided any evidence that these prescriptions were prescribed for pain in his right thumb.

Standard for Summary Judgment

Rule 56 of the Federal Rules of Civil Procedure provides that a court shall 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 a judgment as a matter of law." Fed.R.Civ.P. 56(c).

When a defendant moves for summary judgment, the defendant may meet its burden "by 'showing'-- that is, pointing out to the district court-- that there is an absence of evidence to support"

the plaintiff's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). The nonmoving party cannot rest on the mere allegations of the pleadings, and must, by its own affidavits, or by depositions, answers to interrogatories or admissions on file, "set forth specific facts showing that there is a genuine issue for trial." Fed.R.Civ.P. 56(e).

There is no genuine issue for trial unless "reasonable jurors could find by a preponderance of the evidence that the plaintiff is entitled to a verdict." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient." Id.

Eighth Amendment Claim

The Eighth Amendment's prohibition of "cruel and unusual" punishment protects a prisoner from the "unnecessary and wanton infliction of pain." Ingraham v. Wright, 430 U.S. 651, 670 (1977). The Supreme Court has held that what constitutes an 'unnecessary and wanton infliction of pain' for purposes of the Eighth Amendment will depend upon the particular claim at issue. Hudson v. McMillian, 503 U.S. 1, 5 (1992).

In Eighth Amendment cases involving claims of excessive force, such as the instant case, "the question whether the measure taken inflicted 'unnecessary and wanton' pain and suffering ultimately turns on whether force was applied in a good faith effort to maintain or restore discipline or maliciously and

sadistically for the purpose of causing harm." Hudson, 503 U.S. at 6. The evidence must "support a reliable inference of [the defendant's] wantonness in the infliction of pain." Whitley v. Albers, 475 U.S. 312, 322 (1986).

When considering a prisoner's Eighth Amendment claim of excessive force, the fact-finder "must ask both if the officials acted with a sufficiently culpable state of mind and if the alleged wrongdoing was objectively harmful enough to establish a constitutional violation." Hudson, 503 U.S. at 8. The Supreme Court has stated that a prisoner need not establish significant injury in order to make out an excessive force claim under the Eighth Amendment. Id. At the same time, however, the Supreme Court has recognized that not "every malevolent touch by a prison guard gives rise to a federal cause of action." Id. As the Supreme Court noted, "[t]he Eighth Amendment's prohibition of 'cruel and unusual' punishments necessarily excludes from constitutional recognition de minimis uses of physical force, provided that the use of force is not of a sort 'repugnant to the conscience of mankind.'" Id. at 9-10.

Accordingly, although a plaintiff need not establish significant injury in order to prevail on an Eighth Amendment claim of excessive force, a plaintiff must establish that his injury rises above the "de minimis level of imposition with which the Constitution is not concerned." Ingraham, 430 U.S. at 674. See Norman v. Taylor, 25 F.3d 1259, 1263 (4th Cir. 1994); Barber v. Grow, 929 F.Supp. 820, 823 (E.D. Pa. 1996); Collins v. Bopson,

816 F.Supp. 335, 340 (E.D. Pa. 1993).

In the instant case, Plaintiff has failed to produce any evidence that Defendant Kelly closed the door on Plaintiff's thumb with a sufficiently culpable state of mind-- that is, maliciously and sadistically for the purpose of causing harm. Moreover, Plaintiff has failed to produce any evidence that Defendant Kelly's alleged wrongdoing was objectively harmful enough to establish a constitutional violation. Accordingly, no reasonable jury could find in favor of Plaintiff, and Defendant is entitled to judgment as a matter of law.

With respect to Defendant Kelly's state of mind, Plaintiff has failed to produce evidence which could support a reliable inference of wantonness on the part of Defendant Kelly in the infliction of pain. Plaintiff bears the burden to produce evidence which could support a reliable inference that Defendant Kelly closed the door on Plaintiff's hand maliciously and sadistically for the purpose of causing harm. Plaintiff has failed to produce such evidence. Obviously, Plaintiff's averment that Defendant smiled deviously and Plaintiff's averment that he did not describe the alleged incident as an accident are not sufficient to support a reliable inference that Defendant acted with wantonness in the infliction of pain. Accordingly, no reasonable jury could find that Defendant Kelly closed the cell block door on Plaintiff's hand maliciously and sadistically for the purpose of causing harm.

Moreover, with respect to Plaintiff's injury, Plaintiff has failed to produce evidence that Defendant's conduct was objectively harmful enough to establish a constitutional violation. The undisputed facts reveal that Plaintiff suffered the kind of de minimis imposition with which the Constitution is not concerned. According to the undisputed medical evidence, Plaintiff received a crushing bruise and a cut on his thumb as a result of the door closing on his thumb. Plaintiff visited the dispensary immediately after the incident, where he received a pain reliever and was offered an ice pack which he refused. There is no reliable evidence that Plaintiff was ever treated for his thumb again. Indeed, Plaintiff makes no averments in his affidavit as to the nature or extent of his thumb injury. No reasonable jury could find that Defendant Kelly's conduct in closing the door on Plaintiff's hand was objectively harmful enough to establish a constitutional violation.

In light of Plaintiff's failure to come forward with any evidence as to Defendant's state of mind, and in light of Plaintiff's failure to come forward with evidence that Defendant's conduct was objectively harmful enough to establish more than de minimis injury, no reasonable jury could find in favor of Plaintiff as to his Eighth Amendment excessive force claim against Defendant Kelly.

Accordingly, the Court will grant Defendant Kelly's Motion for Summary Judgment, deny Plaintiff's Motion for Summary Judgment, and will enter judgment in favor of Defendant Kelly.

An appropriate Order follows.