IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

LOUIS D. DICKERSON,	)	
Plaintiff,	)	
v.	)	Civil Action No. 01-430-SLR
ROBERT SNYDER, Warden, LARRY MCGUIGAN, CAPT. J. BELANGER AND C/Os HARRIS, ARCHIBALD, TERRAY, MCGINNIS, STEVENS, CARPENTER, SCOTT, GARDELS and FORNTEZ	)	
Defendants.	)	

MEMORANDUM ORDER

I. INTRODUCTION

Plaintiff Louis D. Dickerson is a Delaware prison inmate housed at the Delaware Correctional Center in Smyrna, Delaware, and has been at all times relevant to his claim. On June 25, 2001, plaintiff filed a complaint with leave to proceed in forma pauperis pursuant to 42 U.S.C. § 1983 against Captain Belanger and Correctional Officers Harris, Terray, McGinnis and Archibald, alleging Eighth and Fourteenth Amendment violations. (D.I. 2) On or about August 14, 2001, plaintiff amended his complaint to include Eighth and Fourteenth Amendment allegations against Correctional Officers Stevens, Carpenter, Scott, Gardels and Forntez. (D.I. 6, 7) Plaintiff is seeking compensatory and

punitive damages in addition to a transfer to another prison facility. (D.I. 6 at 4) Plaintiff is also seeking a temporary restraining order to stop alleged abuse in retaliation for filing the complaint. (D.I. 5) Currently before the court is defendants' motion to dismiss plaintiff's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (D.I. 13) Because the parties presented matters outside the pleadings, the court will review the motion to dismiss as a motion for summary judgment. (D.I. 16) For the reasons that follow, the court shall grant in part and deny in part defendants' motion.

II. BACKGROUND

On April 24, 2001, plaintiff was disciplined for disorderly conduct, failure to obey, creating a health and safety hazard, and damage under $10.00 after he wedged a hard plastic dinner cup into his cell toilet and clogged the drain. (D.I. 14, Ex. C at 1-7, Ex. D) Plaintiff pled guilty and received a sanction of ten days confinement to quarters. (Id.) Plaintiff alleges that defendants Belanger, Scott, Gardels and Forntez hog tied him with nine pairs of handcuffs, shackled him, placed duct tape over his mouth, and put him in a cage, forcing him to sleep on nothing but a mattress for two days. (D.I. 6) Plaintiff also alleges that defendants threatened his life. (Id.) Defendants admit that they handcuffed plaintiff, but they deny using nine handcuffs and duct tape, and threatening plaintiff's life. (D.I. 14, Ex. D at

2) On April 25, 2001, plaintiff was removed from his cell for causing a disturbance on the tier. (Id.) Defendants claim that plaintiff was temporarily removed from his cell to avoid further damage to his cell. (D.I. 14 at 3) In a letter to the court, plaintiff further alleges that defendants have mentally and physically abused him and have threatened his life because of the filing of the complaint. (D.I. 5) Plaintiff also stated that the prison officials have refused to sign necessary legal paperwork, that he had a nervous breakdown, and that he was admitted to Delaware State Hospital. (Id.) Plaintiff claims he has a witness named Lawrence Collingwood who would testify that prison officials refused to sign the paperwork. (Id.) In support of their motion to dismiss, defendants have submitted copies of the incident reports and a single affidavit. Because defendants filed a motion rather than an answer, no discovery has taken place in this case.

III. STANDARD OF REVIEW

The parties have referred to matters outside the pleadings. Therefore, defendants' motion to dismiss shall be treated as a motion for summary judgment. See Fed. R. Civ. P. 12(b)(6). A court shall grant summary judgment only 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). The moving party bears the burden of proving that no genuine issue of material fact exists. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 n.10 (1986). "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." Horowitz v. Fed. Kemper Life Assurance Co., 57 F.3d 300, 302 n.1 (3d Cir. 1995) (internal citations omitted). If the moving party has demonstrated an absence of material fact, the nonmoving party then "must come forward with 'specific facts showing that there is a genuine issue for trial.'" Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)). The court will "view the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion." Pa. Coal Ass'n v. Babbitt, 63 F.3d 231, 236 (3d Cir. 1995). The mere existence of some evidence in support of the nonmoving party, however, will not be sufficient for denial of a motion for summary judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that issue. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). If the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the moving

party is entitled to judgment as a matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

IV. DISCUSSION

A. Plaintiff's Eighth Amendment Claim

In cases where inmates challenge the use of force by prison officials as excessive, the Eighth Amendment is their key source of protection. See Whitley v. Albers, 475 U.S. 312, 327 (1986). The pivotal inquiry in claims of excessive force is "whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." Hudson v. McMillian, 503 U.S. 1, 7 (1992); see also Whitley, 475 U.S. 312. The court must consider: 1) the need for the application of force; 2) the relationship between the need and the amount of force that was used; 3) the extent of injury inflicted; 4) the extent of the threat to the safety of staff and inmates, as reasonably perceived by responsible officials on the basis of the facts known to them; and 5) any efforts made to temper the severity of a forceful response. See Whitley, 475 U.S. at 321 (citations omitted). Defendants cannot prevail on a motion for summary judgment if "it appears that the evidence, viewed in the light most favorable to the plaintiff, will support a reliable inference of wantonness in the infliction of pain." Id. at 322; see also Sampley v. Ruettgers, 704 F.2d 491, 495

(10th Cir. 1983) (finding wantonness when prison guard intended to harm inmate).

A plaintiff can only recover on a § 1983 claim if he can show "intentional conduct by one acting under color of state law which subjected him to the deprivation of a federally secured right." Davidson v. Dixon, 386 F. Supp. 482, 487 (D. Del. 1974), aff'd, 529 F.2d 511 (3d Cir. 1975). The Eighth Amendment's proscription against cruel and unusual punishment "necessarily excludes from constitutional recognition de minimis uses of physical force provided that the use of force is not of a sort repugnant to mankind." Wright v. May, Civ. A. No. 96-47-LON (D. Del. Mar. 19, 1998). Thus, a plaintiff must establish that the injury is more than a "de minimis" injury and that the force was maliciously applied to cause harm. Id. The minimal requisite state of mind for an Eighth Amendment violation is deliberate indifference. See Young v. Quinlan, 960 F.2d 351, 359-60 (3d Cir. 1992).

Although ultimately it is plaintiff's burden to prove excessive force, given plaintiff's pro se status and the absence of any meaningful discovery in this case, the court finds that the record as presented by defendants is insufficient to warrant entry of summary judgment at this stage of the proceedings. Specifically, absent an accounting of all relevant records from April 24 to April 25, 2001 (including medical records and records

relating to how plaintiff's "continued pattern of aggressive and non-compliant behavior" related to this incident), there remain genuine issues of material fact as to what transpired during the incident in question.

B. Qualified Immunity

Defendants contend that they cannot be held liable in their individual capacities under the doctrine of qualified immunity. Government officials performing discretionary functions are immune from liability for civil damages, given that their conduct does "not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). A right is "clearly established" when "[t]he contours of the right [are] sufficiently clear that a reasonable official would understand that what he is doing violates that right." Anderson v. Creighton, 483 U.S. 635, 640 (1987); accord In re City of Philadelphia Litig., 49 F.3d 945, 961 (3d Cir. 1995).

In the case at bar, the record as presented is insufficient to warrant entry of summary judgment in favor of defendants. Therefore, the court declines to rule on whether defendants were performing duties within their discretionary functions at this time.

C. Eleventh Amendment Immunity

Defendants contend that they cannot be held liable in their official capacities under the Eleventh Amendment. "In the absence of consent, a suit [in federal court] in which the State or one of its agencies or departments is named as the defendant is proscribed by the Eleventh Amendment." Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100 (1984). This preclusion from suit includes state officials when "the state is the real, substantial party in interest." Id. at 101 (quoting Ford Motor Co. v. Dep't of Treasury, 323 U.S. 459, 464 (1945)). "Relief sought nominally against an [official] is in fact against the sovereign if the decree would operate against the latter." Id. (quoting Hawaii v. Gordon, 373 U.S. 57, 58 (1963)). A State, however, may waive its immunity under the Eleventh Amendment. Such waiver must be in the form of an "unequivocal indication that the State intends to consent to federal jurisdiction that otherwise would be barred by the Eleventh Amendment." Ospina v. Dep't of Corrs., 749 F. Supp. 572, 578 (D. Del. 1990) (quoting Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 238 n.1 (1985)).

Because the State of Delaware has not consented to plaintiff's suit or waived its immunity, the Eleventh Amendment protects defendants from liability in their official capacities.

V. CONCLUSION

Therefore, at Wilmington, this 10th day of June, 2002;

IT IS ORDERED that:

1. Defendants' motion to dismiss (D.I. 13) is granted as to plaintiff's claims against defendants in their official capacities and denied as to plaintiff's claims against defendants in their individual capacities.

2. Plaintiff's motion for representation by counsel (D.I. 12) is denied at this time.

3. All motions to join other parties and amend the pleadings shall be filed on or before **August 12, 2002**.

4, All discovery shall be completed on or before **September 10, 2002.**

5. All dispositive motions shall be filed on or before **October 10, 2002**. Responses shall be filed on or before **October 24, 2002**. Reply briefs may be filed on or before **November 7, 2002**.

Sue L. Robinson
United States District Judge