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

BRUCE BENSINGER,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
VALLIERE FANRACK, OFFICER;	:	
MARTIN, SGT. and KONAMANN, SGT.,	:	NO. 99-2208
	:	
Defendants.	:	

M E M O R A N D U M

BUCKWALTER, J. April 30, 2001

Presently before the Court is Defendants' Motion for Summary Judgment and Plaintiff's Response and Cross-Motion for Summary Judgment. Plaintiff has sued Defendants for civil rights violations Plaintiff allegedly suffered while he was a prisoner in the Berks County Prison where Defendants are employed. Defendants' motion will be granted in part and denied in part and Plaintiff's Cross-Motion will be denied.

I. FACTUAL BACKGROUND

Plaintiff, an inmate at the Berks County Prison, filed his pro se complaint on June 1, 1999. The incident that gave rise to the Complaint occurred on April 4, 1999. Plaintiff asserts that on that day Officer Valliere Fanrack (Fanrack) ordered Plaintiff and other inmates to leave the prison law library because some inmates, not including Plaintiff, became disruptive in the hallway leading to the library. Plaintiff claims he confronted Sgt. Konamann (Konamann) as he

exited the library explaining that the order to leave the library violated his rights. Then, according to Plaintiff, Konamann and Sgt. Martin (Martin) "body slammed" him to the ground. Once on the ground, Konamann and Martin pulled Plaintiff's arms behind his back and Fanrack handcuffed him. Konamann and Martin then walked Plaintiff to a cell and, as Plaintiff claims, smashed his face against the wall and punched him in the head and the back. Plaintiff contends he requested to see medical personnel after the alleged beating but Konamann and Martin denied his request. Finally, Plaintiff asserts that when he told Konamann and Martin he would sue them and that he knew they would falsify reports, Martin responded, "Take it for what you want."

II. DISCUSSION

The Court interprets Plaintiff's pro se complaint as making four claims against all three Defendants: one for excessive force, one for cruel and unusual punishment, one for falsification of reports, and one for denial of access to the courts. All claims will be dismissed except for the excessive force claim as to Konamann and Martin which must survive both summary judgment motions. The Court also rejects Defendants' arguments that they are entitled to qualified immunity and that Plaintiff is not entitled to punitive damages.

A. Legal Standard

A motion for summary judgment shall be granted where all of the evidence demonstrates "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). A genuine issue of material fact exists when "a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby Inc., 477 U.S. 242, 248 (1986). "Only disputes over facts that might affect the

outcome of the suit under the governing law will properly preclude the entry of summary judgment." Id.

If the moving party establishes the absence of the genuine issue of material fact, the burden shifts to the nonmoving party to "do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986).

When considering a motion for summary judgment, a court must view all inferences in a light most favorable to the nonmoving party. See Diebold, 369 U.S. at 655. The nonmoving party, however, cannot "rely merely upon bare assertions, conclusory allegations or suspicions" to support its claim. Fireman's Ins. Co. v. DeFresne, 676 F.2d 965, 969 (3d Cir. 1982). To the contrary, a mere scintilla of evidence in support of the nonmoving party's position will not suffice; there must be evidence on which a jury could reasonably find for the nonmovant. Liberty Lobby, 477 U.S. at 252. Therefore, it is plain that "Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). In such a situation, "[t]he moving party is 'entitled to a judgment as a matter of law' because the non-moving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof." Id. at 323, quoting Fed. R. Civ. P. 56(c).

B. Excessive Force Claim

Viewing the facts in a light most favorable to Plaintiff, as summary judgment requires, the Court believes Plaintiff's excessive force claim must survive summary judgment with respect to Konamann and Martin and must be dismissed with respect to Fanrack. Defendants argue Plaintiff's excessive force claim with respect to all three Defendants must be dismissed because 1) Defendants used an appropriate and reasonable amount of force and 2) Plaintiff's alleged injuries were *de minimus*. Defendants also argue that even if these two arguments fail, the Court must dismiss the excessive force claim as to Fanrack because Plaintiff has failed to allege or show any facts that indicate Fanrack was involved in any potentially unconstitutional conduct.

First, Defendants maintain they employed only the minimal force necessary to protect their safety and institutional security and therefore did not violate Plaintiff's constitutional rights. As the Supreme Court has explained, when faced with authorities who have used force to put down a prison disturbance, courts should consider "whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm." Whitley v. Albers, 475 U.S. 312, 320-21 (1986). Here, Defendants rely on Konamann's affidavit which mentions nothing about his beating Plaintiff and explains Defendants followed proper procedures using a minor degree of force necessary to restrain Plaintiff. See Defendants' Motion p.5. While the affidavit supports Defendants' position, and might well help Defendants at trial, it is controverted by Plaintiff's story. If Plaintiff is believed, Fanrack, Konamann and Martin cooperated to restrain and handcuff Plaintiff in a hallway and then Konamann and Martin escorted Plaintiff to a cell in which they beat him

while he was handcuffed. Mindful of the Whitely principle, the Court believes these conflicting stories create a genuine issue of a material fact which cannot be resolved on a motion for summary judgment.

Second, Defendants argue Plaintiff's excessive force claim should be dismissed because Plaintiff offers no evidence of injury and those alleged "are *de minimus* and do not rise to the level of a constitutional violation." Defendants' Motion p.7. The Court rejects this argument. In Hudson v. McMillian, the Supreme Court establishes "that a showing of 'significant' or 'serious' injury is not necessary to make an Eighth Amendment claim" and that the issue turns on the relationship between the degree of force employed and the apparent need for it. Brooks v. Kyler, 204 F.3d 102, 107 (3d Cir. 2000), quoting Hudson v. McMillon, 503 U.S. 1, 8 (1992). Here, assuming Plaintiff's facts are true, the degree of force employed once Plaintiff was secured in the cell exceeded the apparent need for force. Accordingly, the claim with respect to Konamann and Martin must survive summary judgment.

Finally, Defendants argue Plaintiff's claim against Fanrack should be dismissed because Plaintiff asserts no facts which indicate Fanrack was involved in the alleged abuse in the cell. See Defendants' Motion p.7. The Court agrees. Plaintiff's version of the facts merely has Fanrack placing handcuffs on Plaintiff after Konamann and Martin restrained him, which was prior to Konamann and Martin taking Plaintiff into the cell where the alleged beating occurred. See Plaintiff's Complaint. The Court believes Fanrack's handcuffing falls far short of excessive force and was reasonable when considering Plaintiff admits he was causing a disturbance. See Plaintiff's Response p.4 (suggesting the appropriate charge for his conduct was causing a

disturbance). There is no genuine issue of material fact with regard to Fanrack's conduct and therefore the excessive force claim as to Fanrack will be dismissed.

C. Cruel and Unusual Punishment Claim

Plaintiff claims he was subjected to cruel and unusual punishment when Defendants denied him medical care after they restrained and allegedly beat him. In making this claim, Plaintiff must show Defendants acted with a "deliberate indifference to serious medical needs." See Estelle v. Gamble, 429 U.S. 97, 104 (1976) (concluding "that deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain' proscribed by the Eighth Amendment) (internal citation omitted). The Supreme Court has explained that deliberate indifference can come in several forms such as a doctor failing to respond to a prisoner's needs, a prison guard intentionally denying or delaying access to medical care or a prison guard intentionally interfering with treatment once prescribed. See id. at 104-5. Here, Defendants' proffer a registered nurse's medical report which contradicts Plaintiff's claim by indicating Plaintiff was seen by a medical staff person, appeared to be in good health and refused treatment. See Defendants' Motion Exhibit E. Under the standard for summary judgment this proffer has the effect of shifting the burden back to Plaintiff to "do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). Plaintiff, however, offers nothing to rebut the report other than the bald assertion that the report is false. The Court concludes Plaintiff fails to meet his burden and will dismiss Plaintiff's cruel and unusual punishment claim.

D. Falsifying Reports Claim

Plaintiff alleges that Defendants filed false incident reports regarding the April 4, 1999, incident, and thereby violated his civil rights. The filing of charges later proven to be false is not a constitutional violation so long as the inmate is provided with due process, unless the charges were filed in retaliation for the exercise of a constitutional right. See Flanagan v. Shively, 783 F. Supp. 922, 931 (M.D. Pa. 1992), aff'd, 980 F.2d 722 (3d Cir. 1992). An allegation by an inmate that he was falsely accused, without more, fails to state a civil rights claim. See id. Although Plaintiff alleges Defendants and personnel from the prison's medical staff doctored reports to make him appear uninjured and more culpable than he was, his allegation lacks the necessary element of deprivation of due process or, if he was provided due process, retaliation for the exercise of a constitutional right. Accordingly, this claim will also be dismissed.

E. Denial of Access to Courts Claim

Plaintiff claims that Defendants deprived him of a constitutional right to access the Courts when they did not allow a group of inmates including Plaintiff to use the prison law library. In Bounds v. Smith, 430 U.S. 817 (1977), the Supreme Court held that "the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." Id. at 828. An inmate, however, cannot establish a constitutional violation simply by highlighting some deficiency in a prison law library or assistance program; he must also show how that deficiency "hindered his efforts to pursue a legal claim." Lewis v. Casey, 518 U.S. 343, 351 (1996). Here, Plaintiff

alleges that his not being able to access the law library on April 4, 1999, led to his being denied bail reduction. See Plaintiff's Response p.3. The facts, however, significantly undermine Plaintiff's story. Plaintiff filed his motion to reduce bail on February 4, 1999, and the Berks County Court denied the motion four days after that on February 8, 1999, nearly two months before the April 4, 1999, incident. See Defendants' Reply Exhibit A. Plainly stated, Plaintiff could not have been preparing for a bail reduction motion which was already filed and denied. In light of these facts, Plaintiff cannot show injury as required by Lewis and therefore his denial of access to the courts claim will be dismissed.

F. Defendants' Claim of Immunity

Defendants claim they are entitled to qualified immunity because they are government officials who were working within the scope of their official duty at the time the April 4, 1999, incident occurred. Because all other claims and the excessive force claim as to Fanrack will be dismissed, the Court only needs to consider immunity in the context of Plaintiff's excessive force claim as it pertains to Konamann and Martin. Generally, government officials are entitled to qualified immunity unless they knew or reasonably should have known that their actions were depriving a plaintiff of clearly established constitutional rights. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). Here, assuming Plaintiff's allegations are true, Konamann and Martin, who are trained professional prison officers, should have known their beating of Plaintiff deprived Plaintiff of his constitutional rights under the Eighth Amendment. Consequently, the Court does not believe Konamann and Martin are entitled to immunity.

G. Punitive Damages

The final issue presented by the motions before the Court is whether punitive damages are available to Plaintiff. Defendants argue they are not and the Court disagrees. The Supreme Court in Smith v. Wade, 461 U.S. 30 (1983), concluded punitive damages can be appropriately awarded in § 1983 claims if a "defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." Smith, 461 U.S. at 56. Here, one of Plaintiff's § 1983 claims will survive Defendants' Motion for Summary Judgment and it includes allegations of conduct which suggests Konamann and Martin acted with reckless or callous indifference to Plaintiff's federally protected rights. Accordingly, the Court will not preclude Plaintiff from seeking punitive damages.

III. CONCLUSION

For the reasons set forth above, Defendants' Motion for Summary Judgment will be granted in part and denied in part, and Plaintiff's Motion for Summary Judgment will be denied.

An appropriate Order follows.

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Plaintiff,	:	CIVIL ACTION
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v.	:	
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VALLIERE FANRACK, OFFICER;	:	
MARTIN, SGT. and KONAMANN, SGT.,	:	NO. 99-2208
	:	
Defendants.	:	

O R D E R

AND NOW, this 30th day of April, 2001, upon consideration of defendants Fanrack's, Martin's and Konamann's Motion for Summary Judgment (Docket No. 39), and plaintiff Bruce Bensinger's Response and Cross-Motion for Summary Judgment (Docket No. 43), it is **ORDERED** that Defendants' motion is **GRANTED** in part and **DENIED** in part and Plaintiff's motion is **DENIED**. More specifically:

(1) Plaintiff's claim for excessive force as to defendant Fanrack only is **DISMISSED**;

(2) Plaintiff's claim for cruel and unusual punishment is **DISMISSED**;

(3) Plaintiff's claim for falsification of reports is **DISMISSED**; and

(4) Plaintiff's claim for denial of access to the courts is **DISMISSED**.

IT IS FURTHER **ORDERED** that the document marked as Docket No. 18 for case number 00-CV-2934 be renumbered Docket No. 44A for case number 99-CV-2208.

BY THE COURT:

RONALD L. BUCKWALTER, J.