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

MARSHA CRAWFORD, Plaintiff,	:	CIVIL ACTION
v.	:	
JEFFREY A. BEARD, et al., Defendants.	:	NO. 04-0777

MEMORANDUM AND ORDER

Newcomer, S.J. January 19, 2005

Presently before the Court is Defendants' Motion for Summary Judgment. Plaintiff, a nurse working at Graterford Prison, brings this Section 1983 action alleging that several corrections officers violated her constitutional rights when they allegedly failed to protect her when she was abducted by an inmate who she was treating and failed to prevent the attack altogether. She also claims that their actions violate Pennsylvania state law. Plaintiff's claims cannot proceed. For the reasons set forth below, Defendant's Motion must be granted.

I. BACKGROUND

On August 9, 2003, Plaintiff, Marsha Crawford, was assaulted by Richard Reed ("Reed"), an inmate at the State Correctional Institute at Graterford ("Graterford"). Plaintiff worked as a nurse for Wexford Health Services, a private contractor that provided medical services to the Prison. Her duties including assessing the inmates' health needs housed in the Mental Health Unit ("MHU"). Officer Robinson, a corrections

officer, informed Plaintiff that Reed was experiencing chest pains.[1] Before entering his cell, Plaintiff said to Officer Robinson: "Well, I'll check his blood pressure and we need to get another officer." Accompanied by Officers Gregoire and Robinson, Plaintiff approached Reed's cell and asked if he was having chest pains. The two officers entered the cell, and once inside, they separated allowing Plaintiff to approach Reed, who was not handcuffed at the time. After Plaintiff took his blood pressure, Reed grabbed her and pulled her to the back of the cell, and threatened to rape her and kill her. Robinson and Gregoire approached Reed, at which point Reed saw them and responded "Stay back or I'll snap her neck." Plaintiff motioned with her hand to stay back; the officers complied. In a stunning display of calm, Plaintiff attempted to de-escalate the situation by talking to Reed and by offering him a cigarette. Reed did not comply. Officer Gregoire instructed Reed: "Don't hurt the nurse." Yet, it was not until Officer Smith arrived and convinced Reed to release Plaintiff.

Following this Court's July 20, 2004 Order partially granting Defendants' Motion to Dismiss, Plaintiff filed an Amended Complaint that alleges four (4) claims: Count I (state created danger claim); Count II (Monell claim); Count III

[1] Reed is a very large man at six feet, three inches, weighing approximately three hundred twenty-five pounds.

(intentional infliction of emotional distress); and Count IV (bystander liability/failure to intervene). For the reasons set forth below, the Court enters summary judgment in favor of Defendants on Counts I, II, and IV. The Court declines to exercise supplemental jurisdiction over Count III. Count III is dismissed for lack of subject matter jurisdiction.

II. JURISDICTION

This Court exercises jurisdiction pursuant to 28 U.S.C. § 1331 over Plaintiff's Section 1983 claim. As it is dismissing all federal claims, the Court, in its discretion, declines to exercise jurisdiction over the supplemental state claim for intentional infliction of emotional distress. See 28 U.S.C. § 1367(c). There is no diversity of citizenship between Plaintiff and Defendants, who all appear to be citizens of Pennsylvania. Consequently, Count III of Plaintiff's Amended Complaint is dismissed for lack of subject matter jurisdiction.

III. DISCUSSION

A. Legal Standard for Summary Judgment

Summary judgment is appropriate "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). A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the non-moving party. See Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992). Finally, depositions may be considered in ruling on a motion for summary judgment pursuant to FED. R. CIV. P. 56(c). See Palm Bay Imps., Inc. v. Miron, 55 Fed. Appx. 52, 57 (3d Cir. 2002).

B. Application to Plaintiff's Claims

1. State-Created Danger Theory

In Count I of her Amended Complaint, Plaintiff alleges a state-created danger theory of liability under the Due Process Clause of the Fourteenth Amendment. Generally, state-created danger claims derive from a state's affirmative duty to protect individuals from harm by third persons when the state has created or increased the risk of harm. See Kneipp v. Tedder, 95 F.3d 1199, 1207 (3d Cir. 1996). The state-created danger theory has its origins in DeShaney v. Winnebago County Department of Social Services, 489 U.S. 189, 195 (1989), which held that nothing in the due process clause of the Fourteenth Amendment creates an affirmative duty on the part of the state to "protect the life, liberty, and property of its citizens against invasion by private actors." Yet, if the state created or increased the danger to

which the plaintiff was exposed, state actors may face liability under § 1983. See Kepner v. Houstoun, 164 F. Supp. 2d 494, 498 (E.D. Pa. 2001) (citing DeShaney, 489 U.S. at 201). The Third Circuit has adopted the state created danger theory in Kneipp and has articulated a four prong test to establish liability under it:

> (1) the harm ultimately caused was foreseeable and fairly direct; (2) the state actor acted in willful disregard for the safety of the plaintiff; (3) there existed some relationship between the state and the plaintiff; (4) the state actors used their authority to create an opportunity that otherwise would not have existed for the third party's crime to occur.
> Kneipp, 95 F.3d at 1208 (quoting Mark v. Borough of Hatboro, 51 F.3d 1137, 1152 (3d Cir. 1995)).

In Schieber v. City of Philadelphia, 320 F.3d 409, 417 (3d Cir. 2003), the Third Circuit supplemented these four prongs with an additional element: "the plaintiff must show that the state acted in a manner that 'shocks the conscience.'"[2] Even assuming that Plaintiff can satisfy the first three prongs, she cannot satisfy the fourth prong and the shocks the conscience test.

The fourth prong requires a plaintiff to prove that the state actors used their authority to create an opportunity that

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[2] See County of Sacramento v. Lewis, 523 U.S. 833, 845 (1998) (noting that "the touchstone of due process protection is protection of the individual against arbitrary action of the government"); id. at 846 ("cases dealing with . . . executive action have repeatedly emphasized that only the *most egregious* official conduct can be said to be arbitrary in the constitutional sense.") (emphasis added); Brown v. Pa. Dep't of Health Emergency Med. Servs. Training Inst., 318 F.3d 473, 480 (3d Cir. 2003) (deriving "the principle that the "shocks the conscience" standard should apply in all substantive due process cases if the state actor had to act with urgency.").

otherwise would not have existed for the third party's crime to occur. For this prong to be satisfied, "the dispositive factor appears to be whether the state has in some way placed the plaintiff in a dangerous position that was foreseeable, and not whether the act was more appropriately characterized as an affirmative act or an omission." Morse v. Lower Merion School District, 132 F.3d 902, 915 (3d Cir. 1997). Here, Defendants did not in any way place Plaintiff in a dangerous position. Plaintiff entered the cell voluntarily. See Pl.'s Dep. at 23. Importantly, Graterford is an inherently dangerous place. See id. at 75-6. The corrections officers were there to protect Plaintiff from any potential attack, such as the one that occurred. After Reed grabbed Plaintiff, the officers took a half step forward to restrain Reed and to protect Plaintiff, only to be waived off by her after Reed said "Stay back or I'll snap her neck." See id. at 28-9; 72. While Plaintiff testified that the correctional officers did not order the inmate to release her, she admits that they instructed Reed: "Don't hurt the nurse." See id. at 72. It appears that Plaintiff was unsatisfied, to say the least, with the manner in which the correctional officers handled the situation. See id. ("I think they could have issued an order to release me."); id. at 68-9 (Plaintiff testifying that the officer in the security control 'bubble' did not call for help); id. at 55 (Plaintiff testifying that the correctional officers should have obeyed the policy that four officers should

be assigned to anyone entering Reed's cell; only two officers accompanied Plaintiff here).

Nevertheless, Reed created the dire situation and not the Defendants. C.f. Kepner, 164 F. Supp. 2d at 501. It is quite possible that Reed could have attacked Plaintiff even with four or more corrections officers present. In hindsight, Defendants admit that Officers Robinson and Gregoire could have taken steps to prevent the attack.[3] See Defs.' Br. at 10. However, negligent conduct cannot support a state-created danger claim. See Schieber, 320 F.3d at 417-18 ("liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process"; Kepner, 164 F. Supp. 2d at 500 (citing Lewis, 523 U.S. at 848-49). Accordingly, the fourth prong is not satisfied.

Under Schieber, Defendants' conduct must shock the conscience. This Court finds that no reasonable juror could find that Defendants acted in a manner that shocks the conscience. None of the challenged behavior was so "brutal and offensive" to have violated the "decencies of civilized conduct." See Lewis, 523 U.S. at 846. In defining the parameters of this legal standard, the Third Circuit has counseled that "the exact degree of wrongfulness necessary to reach the 'conscience shocking'

[3] The Court is not making any determination as to whether Defendants' conduct was negligent. It merely finds that, even viewed in the light most favorable to the Plaintiff, the conduct is negligent *at worst*, which again does not support a state-created danger claim.

level depends on the circumstances of a particular case." Miller v. City of Philadelphia, 174 F.3d 368, 375 (3d Cir. 1999).

Even viewing the evidence in the light most favorable to the Plaintiff, it is clear that the corrections officers were protecting Plaintiff. According to Plaintiff's deposition, Officer Gregoire said to Reed "Reed, don't hurt the nurse" and then offered him cigarettes and coffee, presumably to de-escalate the situation. See Pl.'s Dep. at 30. Soon thereafter, Officer Smith entered the cell and firmly said "Oh, no, Reed, not the nurse" which resulted in Reed releasing Plaintiff. See id. at 32. Handcuffing Reed *might* have prevented the attack. However, the failure to handcuff, at worst, could constitute negligent conduct, which falls short of the shock the conscience standard. The same reasoning applies to Plaintiff's assertion that the officers could have "rushed" Reed. See id. at 56. Finally, it cannot be said that the presence of more officers would have prevented the attack, or would have expedited Plaintiff's release if the same "don't come any closer" threat had been issued. Even when viewed in light most favorable to the Plaintiff, there is no genuine issue of material fact whether the challenged conduct shocked the conscience.

While this result may appear harsh, the Supreme Court has found that the Fourteenth Amendment is not "a font of tort law to be superimposed upon whatever systems may already be administered by the States." See Kepner v. Houstoun, 164 F.

Supp. 2d 494, 499 (E.D. Pa. 2001) (quoting Lewis, 523 U.S. at 848). In this case, the cause of action that the government or its agents failed to provide a safe work environment is nothing more than a state tort claim dressed up in substantive due process clothing. See White v. Lemacks, 183 F.3d 1253, 1258 (11th Cir. 1999). The Supreme Court has already rejected the argument that a government employer owes a constitutional obligation to provide its employees with certain minimum levels of safety and security in the workplace. See Collins v. City of Harker Heights, 503 U.S. 115, 127 (1992); Schieber, 320 F.3d at 417-18 (quoting Lewis, 523 U.S. at 848-49) ("the Constitution does not guarantee due care on the part of state officials; liability for negligently inflicted harm is *categorically beneath* the threshold of constitutional due process")(emphasis added). Thus, Plaintiff's state-created danger claim fails and Defendants are entitled to summary judgment on Count I of Plaintiff's Amended Complaint.

C. Monell Claim

Because there was no constitutional tort in this case, the Monell claim cannot be sent to the jury for resolution. See Monell v. Dep't of Soc. Servs., 436 U.S. 658, 691-92 (1978); Brown v. Pa. Dep't of Health Emergency Med. Servs. Training Inst., 318 F.3d 473, 482 (3d Cir. 2003)) (citing Collins, 503 U.S. at 112) (finding that "for there to be municipal liability, there still must be a violation of plaintiff's constitutional

rights."). Defendants are entitled to summary judgment on Count II of Plaintiff's Amended Complaint.

D. Failure to Intervene/Bystander Liability Claim

In Count IV of Plaintiff's Amended Complaint, she alleges that Defendants stood idly by as Plaintiff was attacked and failed to intervene. The Third Circuit has held "that a corrections officer's failure to intervene in a beating can be the basis of liability for an Eighth Amendment violation under § 1983 if the corrections officer had a reasonable opportunity to intervene and simply refused to do so." Smith v. Mensinger, 293 F.3d 641, 650 (3d Cir. 2002). That Court identified the elements of a failure to intervene claim: a plaintiff must prove that (1) the officers had a duty to intervene; (2) the officers had the opportunity to intervene; and (3) the officers failed to intervene. See id. at 650-51.

If it is not immediately apparent, Smith is distinguishable from this case because, under the facts in Smith, one corrections officer stood idly by as other officers beat a prisoner, triggering liability under the Eighth Amendment for cruel and unusual punishment.[4] In this case, there is no Eighth

[4] Smith and its progeny involved situations in which corrections officers witness, but fail, to intervene in the beating of an inmate by other officers. See A.M. v. Luzerne County Juvenile Det. Ctr., 372 F.3d 572, 587 (3d Cir. 2004); Gordon v. Gonzalez, 84 Fed. Appx. 171, 172 (3d Cir. 2003) (discussing that use of excessive force may violate a prisoner's Eighth Amendment right against cruel and unusual punishment).

Amendment issue because corrections officers were not attacking inmates. Here, a nurse was attacked by an inmate. The Eighth Amendment protection does not extend to Plaintiff. The Due Process Clause of the Fourteenth Amendment is the only constitutional right at issue in this case. Thus, the three part test announced in Smith is inapplicable here.

This analysis is consistent with DeShaney which recognized an affirmative duty to protect when the state incarcerates an individual, but otherwise concluded that "[a]s a general matter . . . a State's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause." 489 U.S. at 197. Accordingly, Defendants are entitled to summary judgment on Count IV of Plaintiff's Amended Complaint.

IV. CONCLUSION

Because Defendants conduct does not shock the conscience and because Reed created the dire situation and not the Defendants, summary judgment must be granted in favor of Defendants. An appropriate Order follows.

S/ Clarence C. Newcomer
United States District Judge

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O R D E R

AND NOW, on this 19th day of January 2005, upon consideration of Defendants' Motion for Summary Judgment (Doc. 14), Plaintiff's Response, and Defendants' Reply, it is hereby ORDERED that said Motion is GRANTED. Summary Judgment is ENTERED in favor of Defendants and against Plaintiff on the following Counts of Plaintiff's Amended Complaint (Doc. 8): Count I (state created danger claim); Count II (Monell claim); Count IV (bystander liability/failure to intervene). Count III (intentional infliction of emotional distress) is DISMISSED with prejudice. It is further ORDERED that Defendants' Motion for Leave to File a Reply (Doc. 17) is GRANTED. The Clerk of the Court shall close this case for statistical purposes.

AND IT IS SO ORDERED.

S/ Clarence C. Newcomer
United States District Judge