

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

SHAWN GIROUX,)	
)	
Plaintiff)	
)	
v.)	Civil No. 97-0198-B
)	
SOMERSET COUNTY, FRED)	
HARTLEY, and BARRY DELONG,)	
Defendants)	

RECOMMENDED DECISION

The plaintiff, Shawn Giroux, brings this action against the defendants, Somerset County, its sheriff, Barry DeLong, and correctional officer Fred Hartley, seeking damages for violations of his constitutional rights pursuant to 42 U.S.C. § 1983 and damages under state tort law. The defendants have filed a motion for summary judgement and the plaintiff has filed his response. For the reasons delineated below, I recommend GRANTING the defendants' summary judgment on the federal claims and DISMISSING the plaintiff's state claims.

I. Summary Judgment

Summary judgment is appropriate 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 a judgment as a matter of law." Fed. R. Civ. P. 56(c). "A material fact is one which has the 'potential to affect the outcome of the suit under applicable law.'" *FDIC v. Anchor Properties*, 13 F.3d 27, 30 (1st Cir. 1994) (quoting *Nereida-Gonzalez v. Tirado-Delgado*, 990 F.2d 701, 703 (1st Cir. 1993)).

The Court views the record on summary judgment in the light most favorable to the nonmovant. *Levy v. FDIC*, 7 F.3d 1054, 1056 (1st Cir. 1993).

However, summary judgment is appropriate "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). Once the moving party has presented evidence of the absence of a genuine issue, the nonmoving party must respond by "placing at least one material fact in dispute." *Anchor Properties*, 13 F.3d at 30 (citing *Darr v. Muratore*, 8 F.3d 854, 859 (1st Cir. 1993)).

II. Background

Considering the procedural posture of this case, the Court recites the facts in a light most favorable to the plaintiff. The plaintiff began serving a thirty-four day sentence in Somerset County Jail on September 6, 1995. On the evening of September 19th a corrections officer, Deputy Doug Manson told the plaintiff that Sergeant Gotardi of the Somerset County Sheriff's Department wanted to speak with him. In front of Manson, Robert Tucker, a prisoner who shared a common day room with the plaintiff, told the plaintiff that he would kill the plaintiff if he spoke to the officer. Apparently, Tucker believed the plaintiff was going to give Gotardi information against Tucker.

Sometime before the plaintiff returned from meeting with Gotardi, the plaintiff requested a transfer from his cell because of the threat by Tucker. That night prison officials moved the plaintiff to another cell that did not share a common day room with Robert Tucker. Although the threat by Robert Tucker was apparently the reason the plaintiff was moved, none of the prison records explain why he was moved to a different cell.

The next day Robert Tucker, with his brother Scott Tucker at his side, again threatened the plaintiff while both waited for breakfast. During breakfast Scott Tucker told the plaintiff and two other inmates, Tony St. Pierre and Wayne Curtis that they were lucky his brother could not get to them. Scott Tucker and St. Pierre then argued for some time but Scott Tucker never directly threatened the plaintiff.

Later that day Scott Tucker and other inmates went by the plaintiff's cell and yelled threats at the plaintiff and his cellmate, St. Pierre. After the threats were made, St. Pierre asked to meet with the administrator of the jail, Lieutenant Judith Thornton. Thornton met with St. Pierre, the plaintiff and Wayne Curtis.¹ The plaintiff claims that during the meeting he asked Thornton to place him in protective custody. On September 20th and 21st the plaintiff was cell-fed. Prison records do not indicate why he did not have his meals with the other inmates but apparently it was done to protect the plaintiff from other inmates.

In the evening of September 21st the plaintiff and eight or nine other inmates were brought to the visiting room. While the plaintiff was in the visiting room, Scott Tucker entered. Visiting period lasted for one hour without incident. After the visiting period was over, the prisoners were brought to a holding cell where they are removed one by one and strip searched to ensure no contraband materials entered the facility. No correctional officer was present in the cell, although a deck control officer did watch the prisoners through a plexiglass window.

While in the holding cell, Scott Tucker and another inmate, Donald Christen got into an argument. Defendant Hartley, who was distributing medication to inmates at the time, heard the

¹ Thornton bluntly states in her sworn affidavit that she does not recall ever meeting with St. Pierre or the plaintiff.

argument and removed Christen from the cell. Shortly afterward, Scott Tucker told the plaintiff that he wanted to punch the plaintiff in the face. The plaintiff responded by telling Tucker that he did not want to fight a “state’s witness.” Tucker then hit the plaintiff in the face and the plaintiff jumped on top of Tucker. Defendant Hartley and another officer entered the room and separated the plaintiff and Tucker. The plaintiff received a broken nose, torn ligaments in his shoulder and a laceration to his head during the fight.

III. Discussion

A. Federal Claims

The plaintiff contends that the defendants violated his constitutional rights by failing to protect him against Scott Tucker’s attack. Specifically, the plaintiff claims that the defendants’ failure to protect him from being physically attacked violated his Eighth Amendment right to be free from “cruel and unusual punishment”.

The Eighth Amendment requires prison officials to take reasonable steps to ensure the safety of the inmates. *See Farmer v. Brennan*, 511 U.S. 825, 830 (1994). To determine whether a prison official violated the Eighth Amendment, the Court must apply a two-part test. First, an inmate must “show that he is incarcerated under conditions posing a substantial risk of serious harm.” *Id.* at 833. Second, prison officials must exhibit “deliberate indifference” to the substantial risk of serious harm posed to the inmate. *Id.* In explaining what constitutes “deliberate indifference” the Supreme Court has stated that the official must know of and disregard “an excessive or substantial risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists; and he must also draw the inference.” *Id.* at 838.

Defendant Hartley

The central issues for the purposes of this motion are whether a reasonable jury could conclude that the plaintiff was incarcerated under conditions posing a substantial risk of serious harm and whether Defendant Hartley was aware of facts from which the inference could be drawn that a substantial risk of serious harm existed, and that he actually made that inference.

For the purposes of this recommendation the Court will assume that the plaintiff has alleged sufficient facts from which a reasonable jury could conclude that he was incarcerated under conditions posing a substantial risk of serious harm. However, the plaintiff must also demonstrate that Defendant Hartley was aware of facts from which he could reasonably conclude that the plaintiff was in a substantial risk of danger and that Defendant Hartley actually drew that inference. The plaintiff argues that Hartley's awareness that the plaintiff had been cell-fed was a sufficient basis upon which to draw the necessary inference. The Court disagrees. The plaintiff has presented no facts that Hartley knew of the threats to Plaintiff's life, or that those threats were made by an inmate who was in the holding cell with the plaintiff. Further, there are no facts in the record that Scott Tucker ever attempted to follow through physically on his verbal threats, despite having the opportunity to do so in the cafeteria and during the visitation period. Not only does the Court find that the facts presented form an insufficient basis upon which Hartley should have inferred a risk of harm, the Court also finds that the plaintiff has totally failed to present any facts that Hartley actually made such an inference. Accordingly, I recommend that the Court GRANT the defendants' motion for summary judgment as to Defendant Hartley.

Defendant Somerset County and Sheriff Barry DeLong

The plaintiff claims that because Defendants Somerset County and DeLong's failed to properly train Defendant Hartley, Defendant Hartley was deliberately indifferent to the substantial risk Scott Tucker posed to the plaintiff. However, as explained earlier, the Court is satisfied that Defendant Hartley did not violate the plaintiff's Eighth Amendment rights. Having found that Defendant Hartley did not violate the plaintiff's constitutional rights, no liability can attach to Somerset County or Defendant DeLong for failing to properly train or supervise the Defendant. *See City of Los Angeles v. Heller*, 475 U.S. 796 (1986); *Also see Evans v. Avery*, 100 F.3d 1033, 1039 (1st Cir. 1996). Accordingly, I recommend GRANTING the Defendants' motion for summary judgment as to Defendants Somerset and DeLong.

B. State Claims

Plaintiff asserts a claim of negligence against the defendants pursuant to the Maine Tort Claims Act. Because these claims arise under state law, I recommend the remainder of Plaintiff's Complaint be DISMISSED for lack of subject matter jurisdiction. *Astrowsky v. First Portland Mort. Corp.*, 887 F. Supp. 332, 337 (D. Me. 1995).

IV. Conclusion

Accordingly, I recommend that the Court GRANT the defendants' motion for summary judgment on all federal claims and DISMISS the claims that arise under state law.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Eugene W. Beaulieu
United States Magistrate Judge

Dated on May 13, 1998.