IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RAYMOND L. BRUTON,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 00-1032 JJF
	:	
MICHAEL HENDLER; OPERATION SAFE STREETS PROBATION OFFICERS; PROBATION/PAROLE POLICE OFFICER; KATE EDWARDS; and LISA WHITELOCK,	:	
	:	
Defendants.	:	

Raymond L. Bruton, Smyrna, Delaware.
Pro Se Plaintiff.

Stuart B. Drowos, Esquire of the DEPARTMENT OF JUSTICE FOR THE STATE OF DELAWARE, Wilmington, Delaware.
Attorney for Defendants Michael Hendler, Lisa Whitelock, Kate Edwards, and Operation Safe Streets Probation Officers.

MEMORANDUM OPINION

October 15, 2004
Wilmington, Delaware

Farnan, District Judge.

Presently before the Court are the Motion For Summary Judgment (D.I. 71) filed by State Defendants Hendler and Whitelock, and the Motion To Join Defendants' Motion For Summary Judgment (D.I. 89) filed by State Defendant Kate Edwards. For the reasons stated, the motions will be granted.

BACKGROUND

I. Procedural Background

Plaintiff Raymond Bruton is a pro se litigant who is presently incarcerated at the Delaware Correctional Center ("DCC") in Smyrna, Delaware. His SBI number is 069025. Plaintiff filed this lawsuit pursuant to 42 U.S.C. § 1983. On April 16, 2003, Plaintiff filed an Amended Complaint (D.I. 25), in which he alleged that Defendants violated his liberty interest and right to be free from unreasonable searches and seizures, and demonstrated deliberate indifference to his welfare. The Court dismissed Plaintiff's liberty interest claims as frivolous. (D.I. 32.) On December 30, 2003, Plaintiff filed a properly served, Amended Complaint (D.I. 63) naming Kate Edwards[1] as an additional defendant. On March 2, 2004, the Court construed Plaintiff's proposed Amended Complaint as a motion to amend and granted the motion.

[1] Plaintiff refers to Kate Edwards as Kay Edwards in his filings with the Court.

On September 30, 2004, the Court entered two orders. The first Order (D.I. 97) granted the Motion For Summary Judgment filed by State Defendants and the Motion To Join Defendants' Motion For Summary Judgment filed by Kate Edwards (the subjects of this memo). The second Order (D.I. 98) denied as moot Plaintiff's Motion For Sanctions Pursuant to Rule 11(b) (D.I. 66), Defendants' Motion For Protective Order (D.I. 73), and Defendants' Motion For Enlargement Of Time For Defendants To File A Response (D.I. 84).

At present, there are six claims pending in the : 1) violation of the Fourth Amendment right to be free from unreasonable search and seizure, 2) violation of the Eighth Amendment right to freedom from deliberate indifference, 3) negligence, 4) intentional infliction of emotional distress, 5) false arrest, and 6) false imprisonment.

II. Factual Background

Mr. Bruton's claims relate to an encounter between Defendants and Mr. Bruton which occurred at Plaintiff's residence on March 15, 2000. The parties disagree on the details of this encounter.

A. Defendants' Factual Allegations

At the time of the events alleged in the Amended Complaint, Lisa Whitelock and Michael Hendler were Probation and Parole

Officers employed by the Delaware Department of Correction. (D.I. 72 at A-11.) According to the affidavit of Officer Whitelock, on March 15, 2000, the officers visited the known address of probationer Cheryl L. Diggs, to speak to Ms. Diggs, who had recently been released from the Recovery Center of Delaware. Officer Whitelock testified that the officers were aware that Ms. Diggs was living with Plaintiff, and that Plaintiff had a history of drug involvement and was on parole on the date of the contact.

According to Officer Whitelock, the officers arrived at Plaintiff's house and knocked on the door. Officer Whitelock testified that Plaintiff looked at the officers through the front window, and the officers identified themselves and signaled to Plaintiff to open the door. Officer Whitelock testified that Plaintiff then told them to "hold on" and went away from the window. According to Officer Whitelock, Plaintiff's delay in opening the door concerned the officers. Officer Whitelock testified that, when Plaintiff returned to the door, the officers again requested that he open it. According to Officer Whitelock, Plaintiff only partially opened the door and Officer Hendler then forced the door open. Officer Whitelock testified that Plaintiff's failure to open the door was a violation of a condition of his parole.

According to Officer Whitelock, after the officers entered the house, Plaintiff became agitated and disruptive, prompting

Officer Hendler to call for assistance. Additional officers from the Wilmington Police and the Delaware Department of Correction arrived and handcuffed Plaintiff. (D.I. 72 at A-11; D.I. 25.) The officers then searched the house and discovered drugs and drug paraphernalia. (D.I. 72 at A-2; D.I. 25.)

Officer Hendler submitted a signed statement (D.I. A-8) that explains parole conditions 3 and 7, which Plaintiff is alleged to have violated. Condition 3 states "[y]ou must report to your Supervising Officer at such times and places as directed, and permit the Probation/Parole Officer to enter your home and/or visit places of employment." (D.I. 72 at A-7.) Condition 7 prohibits drug use and possession. (Id.) Officer Hendler contends that, after Plaintiff refused to allow the officers to enter the house, he was reminded of parole condition 3, but still denied the officers' entry.

The Board of Parole ("Board") found that probable cause existed to believe that Plaintiff had violated his parole. (D.I. 72 at A-12.) The Board also found that conditions 3 and 7 had, in fact, been violated. (D.I. 72 at A-13.)

B. Plaintiff's Factual Allegations

Plaintiff alleges that on March 15, 2000, Defendants Hendler and Whitelock came to his home to conduct a routine home visit concerning Plaintiff's house guest, Cheryl L. Diggs. (D.I. 25 at 4.) At the time, Plaintiff was on parole and Ms. Diggs was on

probation. (Id.) Plaintiff alleges that Officer Hendler forced his way into Plaintiff's home while Mr. Bruton was standing at his front door questioning Defendant Hendler about the purpose of his visit. Plaintiff contends that, after Officer Hendler rang Plaintiff's doorbell, Plaintiff went to the front window and asked who was there. According to Plaintiff, Officer Hendler responded that it was a probation/parole officer on a routine visit to see Ms. Diggs. Plaintiff contends that he then went to notify Ms. Diggs of her visitors, leaving his front and storm doors locked. Plaintiff contends that, after he notified Ms. Diggs of the visitors, he went back to the front door. Plaintiff contends that Officer Hendler then forced his way into the house.

According to Plaintiff, he then called his lawyer. Plaintiff contends that his lawyer was not at home and that he called 911 and asked the police to come to the house. Plaintiff further contends that he had already seen his probation officer in March and that he knew that the officers were not there with regard to any issue related to him.

Plaintiff contends that, when the police arrived, they handcuffed him and began to search his home. Plaintiff contends that the officers found drugs and drug paraphernalia in his home and subsequently arrested him. Plaintiff contends that the drugs belonged to Ms. Diggs.

Standards of Law

I. Summary Judgment

In pertinent part, Rule 56(c) of the Federal Rules of Civil Procedure provides that a party is entitled to summary judgment if a court determines from its examination of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). In determining whether there is a triable dispute of material fact, a court must review all of the evidence and construe all inferences in the light most favorable to the non-moving party. Valhal Corp. v. Sullivan Assocs., Inc., 44 F.3d 195, 200 (3d Cir. 1995). However, a court should not make credibility determinations or weigh the evidence. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150 (2000). To properly consider all of the evidence without making credibility determinations or weighing the evidence, a "court should give credence to the evidence favoring the [non-movant] as well as that 'evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that that evidence comes from disinterested witnesses.'" Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 151 (2000).

To defeat a motion for summary judgment, the non-moving party must:

> do more than simply show that there is some metaphysical doubt as to the material facts. . . . In the language of the Rule, the non-moving party must come forward with "specific facts showing that there is a genuine issue for trial."

Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). However, the mere existence of some evidence in support of the nonmovant will not be sufficient to support a denial of a motion for summary judgment; there must be enough evidence to enable a jury to reasonably find for the nonmovant on that issue. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). Thus, if the evidence is "merely colorable, or is not significantly probative," summary judgment may be granted. Id.

II. Lawsuits Brought Pursuant to 42 U.S.C. § 1983

In order to establish a claim pursuant to Section 1983, a plaintiff must show: (1) the conduct complained of was committed by a person acting under color of state law and (2) the conduct deprived the plaintiff 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).

Parties' Contentions

By her motion, Defendant Kate Edwards moves to join the pending Motion For Summary Judgment filed by Defendants Hendler and Whitelock. In her affidavit (D.I. 90), Ms. Edwards testifies

that she was one of the Probation and Parole Officers that rendered back-up assistance to Officer Hendler on March 15, 2000, at Mr. Bruton's residence.

By their motion, Defendants Hendler and Whitelock contend that they are entitled to summary judgment for several reasons. First, Mr. Bruton has failed to exhaust administrative remedies pursuant to 42 U.S.C. § 1997e(a). Second, Mr. Brutons's Fourth Amendment right against unreasonable search and seizure was not violated. Third, Mr. Bruton's allegations of false arrest and false imprisonment should fail because Defendants' actions were lawful. Fourth, Mr. Bruton has not demonstrated "deliberate indifference" in violation of his Eighth Amendment rights. Fifth, Mr. Bruton has not demonstrated extreme or outrageous conduct on the part of Defendants that supports a claim of intentional infliction of emotional distress. Sixth, negligence is not a cause of action pursuant to Section 1983. Seventh, Defendants are entitled to immunity pursuant to the doctrine of qualified immunity. Eighth, Defendants are immune from liability pursuant to the Eleventh Amendment. Ninth, Defendants are immune from liability pursuant to the doctrine of sovereign immunity.

Mr. Bruton responds that Defendants are not entitled to summary judgment because, by entering and searching his house and placing him in handcuffs, Defendants violated his Fourth Amendment rights. Mr. Bruton further contends that Defendants

demonstrated deliberate indifference to his welfare. With regard to his allegation for false arrest and false imprisonment, Mr. Bruton contends that his claims do not fail because Defendants' actions were in bad faith and unlawful pursuant to 11 Del. C4321(d) and Department of Corrections Procedure. Mr. Bruton also contends that he has a cognizable claim for intentional infliction of emotional distress. Finally, Mr. Bruton argues that Defendants are not entitled to immunity.

Discussion

A. Whether Defendant Kate Edwards May Join In The Pending Motion For Summary Judgment

On December 30, 2003, Plaintiff filed a properly served Amended Complaint (D.I. 63) naming Kate Edwards as an additional defendant in this case. On March 2, 2004, the Court construed Plaintiff's proposed Amended Complaint as a motion to amend pursuant to Federal Rule of Civil Procedure 15 and granted the motion. Defendant Edwards now seeks to join the Motion For Summary Judgment filed by Defendants Hendler and Whitelock on January 24, 2004. Mr. Bruton has not raised any objection to Ms. Edwards joining the motion. Because the Court finds that granting the motion would be in the interest of justice, the Court will grant the Motion To Join Defendants' Motion For Summary Judgment (D.I. 89) filed by Kate Edwards.

B. Whether Plaintiff Failed To Exhaust Administrative Remedies

An inmate must exhaust all administrative remedies prior to bringing a federal lawsuit challenging prison conditions, regardless of whether the Complaint alleges an Eighth Amendment violation based on use of excessive force or some other wrong. Porter v. Nussle, 534 U.S. 516 (2002) (citing Civil Rights of Institutionalized Persons Act, § 7(a), as amended, 42 U.S.C.A. § 1997e(a)). There is no futility exception to this requirement. Nyhuis v. Reno, 204 F.3d 65, 67 (3d Cir. 2000).

In this case, on the second page of his Amended Complaint (D.I. 63), in his explanation as to why he did not present the facts relating to the complaint to the state prisoner grievance procedure, Mr. Bruton alleged that the grievance process did not apply to the complaint he was filing. Thus, it is clear from the face of the Amended Complaint that Mr. Bruton did not avail himself of the state prisoner grievance process. However, Mr. Bruton attached to his Answer (D.I. 83) copies of several letters he had written to Mrs. Marlene Lichenstadter, Chairperson of the Board of Parole in Wilmington, Delaware. Thus, the Court finds that, without further inquiry, it cannot determine whether Mr. Bruton failed to exhaust his administrative remedies.

C. Whether Summary Judgment Should Be Granted As To Plaintiff's Claim That He Was Subjected To Unreasonable Search and Seizure

The Fourth Amendment provides that the "right of the people

to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...." U.S. Const. amend. IV. "A probationer's home, like anyone else's, is protected by the Fourth Amendment's requirement that searches be 'reasonable.'" Griffin v. Wisconsin, 483 U.S. 868, 872 (1987). However, "[a] State's operation of a probation system ... presents 'special needs' beyond normal law enforcement that may justify departures from the usual warrant and probable-cause requirements." Id. at 873-74. In United States v. Hill, the Third Circuit extended the holding in Griffin to parolees and concluded that a parolee's car or home can be searched on the basis of reasonable suspicion alone, even in the absence of an authorizing state statute such as that in Griffin. 967 F.2d 902, 909 (3d Cir. 1992). Accordingly, probation and parole officers may search a parolee's residence based on a reasonable suspicion that the parolee is engaged in criminal activity therein. United States v. Knights, 534 U.S. 112 (2001); Griffin v. Wisconsin, 483 U.S. 868 (1987); United States v. Baker, 221 F.3d 438 (3d Cir. 2000); United States v. Hill, 967 F.2d 902 (3d Cir. 1992).

Consistent with their initial burden on summary judgment, Defendants have set forth the basis for their motion and have identified evidence demonstrating the absence of a genuine issue of material fact. Defendants' affidavits indicate that the Officers were performing their duties in accordance with the laws

of Delaware and with Department of Correction procedures. In addition, Defendants have offered the determination of the Hearing Board that probable cause existed to believe that Mr. Bruton had violated the conditions of his parole. (D.I. 72 at Ex. A, 9-12).

In order to meet his burden and defeat Defendants' Motion For Summary Judgment, Mr. Bruton may not rest upon the mere allegations of his Amended Complaint, but must set forth specific facts, by means of affidavits or other evidence, to illustrate that there is a genuine issue for trial. Fed. R. Civ. P. 56(e), Celotex, 477 U.S. at 322. In this case, Mr. Bruton has not offered any facts, by means of affidavit or other evidence, to controvert Defendants' rendition of the facts. Because Mr. Bruton has failed to offer any evidence to support his claim, the Court must accept the facts as alleged by Defendants. Accordingly, the Court will grant Defendants' Motion For Summary Judgment as to the Fourth Amendment claim.

D. Whether Summary Judgment Should Be Granted As To Plaintiff's Claim That His Eight Amendment Rights Were Violated

The Eighth Amendment, which applies to the States through the Due Process Clause of the Fourteenth Amendment, prohibits the infliction of "cruel and unusual punishments" on those convicted of crimes. Wilson v. Seiter, 501 U.S. 294, 297 (1991). Deliberate indifference is established only if the defendant has

actual knowledge of the substantial risk of harm as alleged by plaintiff, and the defendant disregards that risk by intentionally refusing or failing to take reasonable measures to prevent the problem. Farmer v. Brennan, 511 U.S. 825, 837 (1994).

Consistent with their initial burden on summary judgment, Defendants have set forth the basis for their motion and have identified evidence demonstrating the absence of a genuine issue of material fact. Defendants' affidavits indicate that Defendants were performing their duties according to Delaware law and Department of Correction procedures. (D.I. 72 at Ex. A, 9-12).

Mr. Bruton has not offered any facts, by means of affidavit or other evidence, to support a finding of actual knowledge of the substantial risk of harm or a culpable mental state on the part of Defendants. Because Mr. Bruton has failed to offer any evidence to support his claim, the Court must accept the facts as alleged by Defendants. Accordingly, the Court will grant Defendants' Motion For Summary Judgment as to the Eight Amendment claim.

The Court concludes that Mr. Bruton has not offered evidence sufficient to enable a jury to find for him on the Fourth and Eight Amendment claims alleged in his Amended Complaint. The Court further concludes that Mr. Bruton has not established a claim pursuant to § 1983 because he has not shown that the State

Defendants' conduct deprived him of a federally secured right. Thus, the Court will not address Defendants' arguments based on Eleventh Amendment immunity, the doctrine of sovereign immunity, entitlement to qualified immunity, the cognizance of negligence, false arrest, false imprisonment, and intentional infliction of emotional distress as causes of action under § 1983 or, alternatively, the shielding of liability for acts done without gross negligence by the state Tort Claims Act.

CONCLUSION

In sum, the Court concludes that Mr. Bruton has not offered evidence sufficient to demonstrate a genuine issue of material fact or to enable a jury to find for him on the Fourth and Eight Amendment claims alleged in his Amended Complaint. Accordingly, the Motion For Summary Judgment (D.I. 71) filed by Defendants, Officers Hendler and Whitelock, will be granted. The Motion To Join Defendants' Motion For Summary Judgment (D.I. 89) filed by Kate Edwards will also be granted. The Court further concludes that Mr. Bruton has not established a claim pursuant to § 1983 because he has not shown that the State Defendants' conduct deprived him of a federally secured right.

An appropriate Order (D.I. 97) has been entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RAYMOND L. BRUTON,	:	
	:	
Plaintiff,	:	
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v.	:	Civil Action No. 00-1032 JJF
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MICHAEL HENDLER; OPERATION SAFE STREETS PROBATION OFFICERS; PROBATION/PAROLE POLICE OFFICER; KATE EDWARDS; and LISA WHITELOCK,	:	
	:	
Defendants.	:	

FINAL JUDGMENT IN A CIVIL CASE

At Wilmington, this 15th day of October 2004, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that judgment is entered in favor of Defendants Michael Hendler, Operation Safe Streets Probation Officers, Probation/Parole Police Officer, Kate Edwards, and Lisa Whitelock, and against Plaintiff Raymond L. Bruton.

Joseph J. Farnan, Jr.
UNITED STATES DISTRICT JUDGE

Deborah L. Krett
(By) Deputy Clerk