

Farnan, District Judge.

Presently before the Court is Defendants' Motion For Summary Judgment (D.I. 35) and Plaintiff's Motion For Production Of Videotape Interview (D.I. 38). Plaintiff, Dana I. Williams, was an inmate in the custody of the Delaware Department of Corrections at the time this action was commenced. Plaintiff filed the instant action pursuant to 42 U.S.C. § 1983 against Captain Nancy Dietz of the Wilmington Police Department, and two other Defendants designated as Officer John Doe I and Officer John Doe II, alleging police brutality, excessive force, coercion duress and discrimination. For the reasons discussed, the Court has granted Defendants' Motion For Summary Judgment and denied as moot Plaintiff's Motion For Production Of Videotape Interview (D.I. 38).

BACKGROUND

According to Defendants' Motion, Plaintiff was arrested by the Wilmington Police for the assault of Sally Milbury-Steen. Plaintiff was subsequently released on bail; however, Plaintiff continued to threaten and harass Ms. Milbury-Steen. Ms. Milbury-Steen reported numerous complaints to the Wilmington Police Department, including that she had received threatening and harassing phone calls from Plaintiff at her work and home, that Plaintiff falsely swore out a warrant for Ms. Milbury-Steen's arrest alleging that she threatened him outside of the Walnut

Street YMCA, that Plaintiff made false police reports that illegal activity was being conducted at Ms. Milbury-Steen's place of business, and that Plaintiff had vandalized Ms. Milbury-Steen's workplace.

Ms. Milbury-Steen's complaints against Plaintiff were assigned to Detective Rafael Collazo of the Wilmington Police Department. According to Defendants, Detective Collazo saw Plaintiff walking on the 200 Block of East 2nd Street while driving through the neighborhood on his way to a court appearance. (A000003). Plaintiff consented to answer questions at Police Headquarters, and Detective Collazo had Sgt. Clayton Smith and another detective escort Plaintiff to Police Headquarters. Upon arriving at Police Headquarters, Sgt. Smith placed Plaintiff in an interview room in the Criminal Investigation Division. (A000005). In the meantime, Detective Collazo contacted Defendant Dietz to interview Plaintiff.

At 11:59 a.m., Captain Dietz activated a video monitor and tape recorder in the interview room and interviewed Plaintiff. At 12:02 p.m., Captain Dietz advised Plaintiff of his Miranda rights, and proceeded to interview Plaintiff. The videotape recorder was shut off at 1:30 p.m. Plaintiff was then left alone in the interview room for a brief period of time, while Captain Dietz and Detective Collazo consulted the Attorney General's Office and decided to arrest Plaintiff for stalking Ms. Milbury-Steen.

Plaintiff was escorted to the turn-key facility where he was booked and placed in a holding cell. Thereafter, Plaintiff was arraigned and transported to Gander Hill Prison. Plaintiff made no complaints to any member of the Wilmington Police Department about mistreatment prior to filing the instant Complaint.

By his Complaint, Plaintiff alleges that Defendant Dietz and other unnamed officers slapped, kicked and beat Plaintiff in the interview room. In addition, Plaintiff alleges that Defendant Dietz made racially derogatory remarks about Plaintiff.

Upon the completion of discovery, Defendants filed the instant Motion For Summary Judgment. However, Plaintiff failed to file any response to Defendants' Motion. Thereafter, Defendants advised the Court that, in light of Plaintiff's failure to respond to the Motion, Defendants would not be filing a Reply Brief. (D.I. 39). Accordingly, the Court will proceed to the merits of Defendants' Motion.

DISCUSSION

I. Standard of Review

Federal Rule of Civil Procedure 56(c) provides that a party is entitled to summary judgment where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." A party seeking

summary judgment always bears the initial responsibility of informing the Court of the basis for its motion, and identifying those portions of the "pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any," which it believes demonstrate the absence of a genuine issue of material fact. Where, as here, the nonmoving party opposing summary judgment has the burden of proof at trial on the issue for which summary judgment is sought, he must then make a showing sufficient to establish the existence of an element essential to his case. If the nonmoving party fails to make a sufficient showing on an essential element of his case with respect to which he has the burden of proof, the moving party is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Moreover, the mere existence of some evidence in support of the nonmoving party 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 nonmoving party on that issue. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986).

II. Plaintiff's Claims

A. Plaintiff's John Doe Claims

By their Motion For Summary Judgment, Defendants contend that Plaintiff's claims against the "John Doe" Defendants should be disregarded by the Court. Specifically, Defendants contend

that Plaintiff has "lost his opportunity to amend his complaint identifying the John Doe defendants." (D.I. 36 at 5).

As this Court has recognized, "[t]he practice of naming fictitious 'John Doe' defendants in an original complaint operates to preserve the plaintiff's right to later name a defendant whose identify was not known at the time the complaint was filed." Farris v. Moeckel, 664 F. Supp. 881, 894 (D. Del. 1987) (Farnan, J.). However, the Court is not required to "wait indefinitely . . . for a plaintiff to take steps to identify and serve Doe defendants." Williams v. Lower Merion Township, 1995 WL 461246, *3 (E.D. Pa. Aug. 2, 1995). Where discovery has closed and the plaintiff has not taken any steps to substitute defendants who are real parties in interest for the John Doe defendants, the court is permitted to "disregard" the plaintiff's claims against those defendants. Rodriguez v. City of Passaic, 730 F. Supp. 1314, 1319 n. 7 (D.N.J. 1990); Williams, 1995 WL 461246 at * 3-4.

In this case, discovery has been closed for months, and Plaintiff has not, at any time, taken any steps to amend his Complaint or to identify and serve the John Doe defendants so that real parties in interest could be substituted for the fictitiously named parties. Accordingly, the Court will dismiss Plaintiff's claims as they pertain to the John Doe Defendants.

B. Plaintiff's Excessive Force Claim

By his Complaint, Plaintiff contends that Captain Dietz used

"excessive force" during her interview with Plaintiff.

Specifically, Plaintiff alleges that he was slapped, kicked and held down on the ground.

Plaintiff does not specify which constitutional rights were allegedly violated by Defendant Dietz. The Eighth Amendment's prohibition against cruel and unusual punishment is inapplicable to Plaintiff, because the Eighth Amendment does not apply to an individual until after the individual is convicted and sentenced. Graham v. Connor, 490 U.S. 386, 388 (1989). In this case, Plaintiff does not dispute that he voluntarily agreed to come to the police station for questioning. At the time of the questioning, Plaintiff had been released on bail after being arrested on an assault charge nearly two months earlier. Because Plaintiff was not convicted or sentenced on the assault charge or any other charge at the time of the alleged conduct, the Court concludes that the Eighth Amendment is inapplicable to Plaintiff's claim.

Although the Eighth Amendment is inapplicable to Plaintiff's claim, Plaintiff's claim may be reasonably and properly construed as a claim that his Fourth Amendment rights were violated. As the Supreme Court recognized in Graham, a citizen's claim that law enforcement officials used excessive force in the course of making an arrest or seizure is properly analyzed under the Fourth Amendment's "objective reasonableness" standard, rather than under a substantive due process standard. Id. at 388; House v.

New Castle County, 824 F. Supp. 477, 487 (D. Del. 1993).

To establish that law enforcement officers violated an individual's Fourth Amendment rights by using excessive force, the plaintiff must show that the amount of force used by the officers was "unreasonable." Whether the amount of force was unreasonable requires the court to examine the facts and circumstances of each case, including such factors as the severity of the crime, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting or evading arrest. Graham, 490 U.S. at 396.

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 none of the officers physically abused Plaintiff and that none of the officers observed any evidence that Plaintiff was abused. (A000002, A000004, A000005-6, A000007). In addition, Defendants have offered a videotape of Plaintiff's interview, which the Court has reviewed and which the Court finds consistent with Defendants' position that Plaintiff was not subject to any physical abuse. Indeed, the videotape shows no evidence that Plaintiff was abused or that Plaintiff suffered any injuries.

In order to meet his burden and defeat Defendants' Motion For Summary Judgment, Plaintiff may not rest upon the mere

allegations of his 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, Plaintiff has not offered any facts, by means of affidavit or other evidence, to controvert Defendants' rendition of the facts. Because Plaintiff has failed to offer any evidence to support his claim, the Court must accept the facts as alleged by Defendants. Accordingly, the Court concludes that Plaintiff's allegations of excessive force are unfounded, and therefore, the Court has granted Defendants' Motion For Summary Judgment.

C. Miranda Claim

Though not stated clearly, Plaintiff's Complaint implies that Defendant Dietz may have violated Plaintiff's Fifth Amendment rights. "Although conduct by law enforcement officials prior to trial may ultimately impair [an individual's Fifth Amendment rights], a constitutional violation occurs only at trial." United States v. Verdugo-Urquidez, 494 U.S. 259, 264 (1990). After reviewing the affidavits and videotape offered by Defendants, all of which are uncontroverted by Plaintiff as a result of his failure to respond to Defendants' Motion, the Court concludes that Plaintiff cannot establish that his Fifth Amendment rights were violated. Plaintiff was advised of his Miranda rights. Plaintiff did not invoke his right to remain

silent or his right to counsel. In addition, there is no evidence that Plaintiff's statements were used against him at trial. Plaintiff's stalking charge was pending at the time Plaintiff filed his Complaint, and thus, Plaintiff's statements were not used against him at any trial on the stalking charge.¹ Accordingly, the Court concludes that Plaintiff cannot establish that Defendants violated his Miranda rights, and therefore, the Court has granted Defendants' Motion For Summary Judgment.

D. Plaintiff's Request For Release And Monetary Damages

By his Complaint, Plaintiff requests the following types of relief: "charges dropped, record cleared from these charges, . . . [and] compensary [sic], nominal and punitive money damage awards." (D.I. 4). However, based on Plaintiff's allegations, it is unclear which "charges" Plaintiff is referring to in his request for relief. At the time Plaintiff filed the instant action, Plaintiff was serving a sentence for second degree assault; however, Plaintiff was also awaiting trial for the stalking charge against him.

The Supreme Court has held that "when a state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he

¹ Again, the Court observes that Plaintiff has not responded to Defendants' Motion, and thus, Plaintiff has not offered any evidence that, since the filing of this action, any statements he made were used against him at a criminal trial. Accordingly, the Court concludes that Plaintiff has failed to establish a violation of his Fifth Amendment rights.

is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus." Preiser v. Rodriguez, 411 U.S. 475, 500 (1973).

Accordingly, if Plaintiff's request for relief relates to his conviction on the assault charge, the proper remedy for Plaintiff is a writ of habeas corpus. On the other hand, if Plaintiff's request pertains to his stalking charge, Plaintiff's action would not be ripe for this Court's review. Plaintiff has offered no evidence that since the filing of this action, he has been convicted of the stalking charge, or that if he has been convicted, he has exhausted his state remedies. Because the Court cannot grant Plaintiff the relief he requests under Section 1983, the Court has granted Defendants' Motion For Summary Judgment.

Likewise, with respect to Plaintiff's claim for monetary damages, the Supreme Court has held that:

[I]n order to recover damages for an allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus . . .

Heck v. Humphrey, 512 U.S. 477, 486-487 (1994). In this case, Plaintiff has not alleged that his assault conviction was overturned, and there is no evidence indicating that Plaintiff's

conviction was overturned. And, as the Court has indicated, Plaintiff has offered no evidence with respect to his stalking charge, which was pending at the time Plaintiff filed this action. Accordingly, the Court concludes that Plaintiff has failed to establish that he is entitled to monetary relief, and therefore, the Court has granted Defendants' Motion For Summary Judgment.²

CONCLUSION

For the reasons discussed, the Motion For Summary Judgment filed by Defendants, Detective Lieutenant Dietz and Officers John Doe I and II has been granted and Plaintiff's Motion For Production of Videotape Interview has been denied as moot.

An appropriate Order has been entered.

² Because Plaintiff has failed to establish his claims, the Court has also denied as moot Plaintiff's Motion For Production of Videotape Interview.