



**FARNAN, District Judge.**

Presently before the Court is Defendants' Motion for Summary Judgment (D.I. 42). For the reasons stated below, the Court will grant the motion in part and will deny the motion in part.

**BACKGROUND**

Plaintiff Allen R. Jolly is incarcerated at the Delaware Correctional Center in Smyrna, Delaware ("DCC"). (D.I. 2 at 3). According to Plaintiff's Complaint, at approximately 3:00 p.m. on July 17, 1998, Plaintiff returned to his tier to perform his job as "tier man," which required Plaintiff to sweep and mop the tier on which his cell was located.<sup>1</sup> (D.I. 2 at 3). Upon returning to the tier, Plaintiff alleges that he observed Defendant Robert Cook ("Defendant Cook"), a correctional officer at DCC, "slamming doors and yelling and cussing" at other inmates while conducting a count of the inmates on the tier. (D.I. 2 at 3-4). Plaintiff approached Defendant Cook and requested that Defendant Cook unlock Plaintiff's cell door because, as tier man, his door was supposed to remain unlocked until 3:30 p.m. (D.I. 2 at 4). In response to this request, Plaintiff alleges that Defendant Cook began shouting "right in [Plaintiff's] face" to "lock in" to his cell. (D.I. 2 at 4). Plaintiff claims that his cell door remained locked throughout the duration of the incident and that when he informed Defendant Cook that he could not enter his cell because the door was locked, Defendant Cook became enraged.<sup>2</sup> (D.I. 2 at 4). At this point, Plaintiff

---

<sup>1</sup> Buildings in which inmates are housed at the DCC are divided into various "tiers." Plaintiff's cell was located on A Tier in Building C. (D.I. 2 at 3).

<sup>2</sup> Even Defendant Cook's affidavit concedes that, at least initially, Plaintiff's cell was locked and that entry was impossible. (D.I. 43, Exh. A at ¶ 4). Nowhere in his affidavit does Defendant Cook specifically state that Plaintiff's cell was ever unlocked. (D.I. 43, Exh. A at ¶ 4).

alleges that he threw down his broom and walked to the other end of the tier where his cell was located. (D.I. 2 at 4). According to Plaintiff, Defendant Cook then turned to another correctional officer, exclaimed “watch this,” and ran down the tier and “hit [Plaintiff] a couple of times.” (D.I. 2 at 4).

Defendant Cook denies screaming at Plaintiff, but rather, contends that Plaintiff continually refused to enter his cell as ordered. (D.I. 43, Exh. A-1). Defendant Cook also denies that he said “watch this” to another correctional officer or that he struck Plaintiff. (D.I. 43, Exh. A at ¶ 5). Rather, Defendant Cook contends that Plaintiff became “loud and threatening” when ordered to enter his cell, and that this conduct required Defendant Cook to push Plaintiff off balance and to place Plaintiff in a “bear hug” in order to get control of the situation. (D.I. 43, Exh. A at ¶ 5).

As a result of this incident, Plaintiff was placed in “lock down” and was stripped of his job as tier man. (D.I. 2 at 5). Plaintiff avers that he received this punishment despite the fact that a contemporaneously prepared incident report declared that both Plaintiff and Defendant Cook were equally at fault - Plaintiff for refusing to enter his cell and Defendant Cook for pushing Plaintiff, (D.I. 43, Exh. B-3), and furthermore, that Plaintiff was absolved of any disciplinary violations. (D.I. 43, Exh. D). Plaintiff also alleges that he repeatedly complained to Warden Robert Snyder (“Defendant Snyder”), Security Chief Barry Hawk<sup>3</sup> (“Defendant Hawk”), prison

---

<sup>3</sup> Plaintiff named “Barry Hawke” as a Defendant in his Complaint. (D.I. 2 at 1). However, the proper spelling of said Defendant’s name is “Barry Hawk.” (D.I. 14 at 1 n.1).

counselors, and Internal Affairs, but that they continued to keep him in “lock down.” (D.I. 2 at 5). Defendants have submitted uncontradicted evidence that Plaintiff was merely placed in a higher security housing unit, and that Plaintiff was transferred back to his original cell on September 10, 1998.<sup>4</sup> (D.I. 43, Exh. E-2).

Plaintiff filed the instant Complaint on August 20, 1998, alleging that Defendant Cook, Defendant Snyder, and Defendant Hawlk (collectively “Defendants”) violated 42 U.S.C. § 1983 by depriving Plaintiff of his Eighth Amendment right to be free from cruel and unusual punishment and his Fourteenth Amendment right to due process. Although unclear from the Complaint, it appears that Plaintiff claims that Defendant Cook’s physical attack amounted to cruel and unusual punishment, and that Defendants Snyder and Hawlk deprived Plaintiff of due process and subjected him to cruel and unusual punishment by punishing Plaintiff despite their knowledge that Plaintiff did nothing wrong. (D.I. 2 at 5).

### **STANDARD OF REVIEW**

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

---

<sup>4</sup> The above-cited affidavit states that Plaintiff was transferred back to his original cell on September 10, 2000. However, in light of other documentary evidence submitted, this appears to be a typographical error, and that Plaintiff was actually transferred on September 10, 1998.

court must review all of the evidence and construe all inferences in the light most favorable to the non-moving party. Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976). A court should not make credibility determinations or weigh the evidence. Reeves v. Sanderson Plumbing Prods., Inc., 120 S. Ct. 2097, 2110 (2000). Nevertheless, to defeat a motion for summary judgment, Rule 56(c) requires the non-moving party to:

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.” . . . Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is “no genuine issue for trial.”

Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). Thus, a mere scintilla of evidence in support of the non-moving party is insufficient for a court to deny the motion. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). Furthermore, when the moving party has submitted evidence in support of its motion for summary judgment, the non-moving party cannot simply rely on its pleadings or deny the veracity of the moving party’s evidence to defeat the motion. Celotex Corp. v. Catrett, 477 U.S. 317, 325-26 (1986)(citing FED. R. CIV. P. 56(e)). Rather, the non-moving party must present some evidence to demonstrate the existence of a disputed material fact. Id. at 324.

## DISCUSSION

### **I. Plaintiff’s Constitutional Claims**

In order to establish a claim under 42 U.S.C. § 1983, the plaintiff must show that the conduct complained of: (1) was committed by a person acting under color of state law; and (2) deprived the plaintiff of a right secured by the Constitution or laws of the United States. Barna v.

City of Perth Amboy, 42 F.3d 809, 815 (3d Cir.1994)(citations omitted). Because there is no dispute that Defendants were acting under color of state law, the Court will focus solely on whether or not Plaintiff was deprived of any federally secured rights.

**A. Eighth Amendment Claim Against Defendant Cook**

A convicted prisoner's Eighth Amendment right to be free from cruel and unusual punishment is implicated when a prison official uses force against the prisoner. Whitley v. Albers, 475 U.S. 312, 319 (1986). Determining whether a prison official's use of force violates the Eighth Amendment requires a two-step analysis. First, the court must determine whether the force "was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm" (the "subjective" component). Hudson v. McMillion, 503 U.S. 1, 6-7 (1992)(citing Whitley, 475 U.S. at 320-21). Second, the court must determine whether the prison official's conduct was sufficiently serious to violate "contemporary standards of decency" (the "objective" component). Id. at 8.

1. The Subjective Component

In determining whether force was used in good faith or sadistically or maliciously with intent to harm the prisoner, a court must consider several factors, including: the need for the use of force; the relationship between that need and the amount of force used; the extent of the prisoner's injuries; the extent of the perceived threat that the prisoner posed; and any efforts made by the prison officials to lessen the severity of the response. Hudson, 503 U.S. at 7; Brooks v. Kyler, 204 F.3d 102, 106 (3d Cir. 2000).

Defendants contend that Plaintiff has failed to adduce sufficient evidence to establish that Defendant Cook used force maliciously and sadistically for the purpose of causing harm. (D.I. 43

at 9). In particular, Defendants contend that Defendant Cook reasonably responded to Plaintiff's disorderly and threatening conduct and Plaintiff's refusal to obey Defendant Cook's direct order to enter his cell. (D.I. 43 at 9). However, in his Complaint, Plaintiff alleges that he was pushed by Defendant Cook, and then was subsequently attacked and punched by Defendant Cook without provocation. (D.I. 2 at 4). Plaintiff's version of the facts is largely supported by five affidavits submitted by prisoners who witnessed the incident, two of which specifically claim that Defendant Cook struck Plaintiff several times. (D.I. 47, Exh. 1-5). Other evidence also supports Plaintiff's version of the facts. For instance, after a disciplinary hearing regarding Plaintiff's involvement in the altercation, Plaintiff was cleared of the charges of acting "disorderly" and "threatening." (D.I. 43, Exh. D). Moreover, Defendant Cook's own affidavit supports the conclusion that Plaintiff was not being uncooperative in that Defendant Cook admits that Plaintiff's cell door was locked during much of the confrontation. (D.I. 43, Exh. A at 2, ¶ 4). Therefore, in considering this evidence in the light most favorable to Plaintiff, the Court concludes that Plaintiff has adduced sufficient evidence of Defendant Cook's mental state to maintain his Eighth Amendment claim. See Davis v. Costello, 1998 WL 661534, at \*2-4 (D. Del. Aug. 5, 1998)(holding that a prisoner had proven his Eighth Amendment claim, even though the prisoner had kicked and physically resisted prison officials' efforts to transport him, when one of the prison officials repeatedly banged the prisoner's head against a plexi-glass window); Evans v. Hennessy, 934 F. Supp. 127, 133 (D. Del. 1996)(holding that a prisoner had proven that a prison official maliciously intended to cause harm by striking the prisoner, even though the prisoner was being verbally abusive and waiving his hands, because the prisoner never became "physically abusive").

Defendants nonetheless contend that, because Plaintiff has not adduced any evidence of

physical injuries that he suffered during the alleged attack, he cannot sustain his Eighth Amendment claim.<sup>5</sup> (D.I. 43 at 9). However, a prisoner need not suffer any “significant injury” to sustain an Eighth Amendment claim, although the extent of a prisoner’s injuries is relevant to the determination of whether the force used was excessive. Hudson, 503 U.S. at 9. Although Plaintiff has not produced any evidence of physical injuries sustained in the attack, the Court concludes that this does not warrant granting Defendants’ motion for summary judgment under the circumstances. See Brooks, 204 F.3d at 108. Whether or not Plaintiff was successful in deflecting Defendant Cook’s punches does not change the fact that excessive force was used; rather, such evidence is relevant to the issue of damages. See Cummings v. Malone, 995 F.2d 817, 821-23 (8<sup>th</sup> Cir. 1993)(recognizing the availability of nominal damages for Eighth Amendment excessive force claims).

## 2. Objective Component

As noted above, in the context of a prison official’s use of force, a prisoner need not suffer any “significant injury” to sustain an Eighth Amendment claim. Hudson, 503 U.S. at 9. Rather, any time a prison official uses force in an attempt to maliciously and sadistically inflict injury on a prisoner, contemporary standards of decency are violated. Id. This means that “if a prison official acts with a sufficiently culpable state of mind in using force, the objective prong of the Eighth Amendment is necessarily satisfied.” Wright v. May, C.A. No. 96-47-LON (D. Del. March 19,

---

<sup>5</sup> Defendants contend that the lack of evidence pertaining to Plaintiff’s injuries is relevant to the objective component of the analysis. However, as noted above, the extent of injuries suffered has been identified by the United States Supreme Court as a relevant factor to consider when analyzing the subjective component. Furthermore, as discussed below, the Court concludes that in the excessive force context, the objective component is necessarily satisfied if the subjective component is established. Thus, the Court concludes that the extent of Plaintiff’s injuries is more appropriately considered when analyzing the subjective component.



1998)(emphasis added). See also Perez v. Jackson, 2000 WL 893445, at \*1 (E.D. Pa. June 30, 2000)(holding that, regardless of the lack of physical injuries, contemporary standards of decency are always violated when prison officials maliciously and sadistically seek to inflict harm). Therefore, the Court finds that, in concluding above that Plaintiff has adduced sufficient evidence that Defendant Cook acted maliciously and sadistically with the intent to harm, Plaintiff has necessarily satisfied the objective component of Eighth Amendment analysis.

Defendants contend however, that courts have concluded that the use of *de minimus* force by a prison official is generally not actionable under the Eighth Amendment.<sup>6</sup> Hudson, 503 U.S. at 9-10; Brooks, 204 F.3d at 107. However, Plaintiff has adduced evidence that Defendant Cook pushed Plaintiff and then struck Plaintiff several times. The Court concludes that this evidence supports a finding that Defendant Cook used more than *de minimus* force, and accordingly, the objective component of Plaintiff's Eighth Amendment claim is satisfied.

In sum, the Court concludes that Plaintiff has adduced sufficient evidence to defeat

---

<sup>6</sup> The Third Circuit has issued conflicting opinions as to whether *de minimus* force or *de minimus* injury is the relevant issue. In Brooks, a panel of the Third Circuit declared that, after thoroughly analyzing the issue, if a prisoner only suffers *de minimus* injuries, summary judgment is not warranted because the lack of injuries does not prove that the force used was *de minimus*. 204 F.3d at 107-08. However, several weeks later, a different panel from the Third Circuit stated that the objective component is satisfied only if the prisoner suffers more than *de minimus* injuries. Fuentes v. Wagner, 206 F.3d 335, 345 (3d Cir. 2000). The Court concludes that Brooks more closely adheres to the standards set forth in Hudson, in which the United States Supreme Court opined that significant injury is not required in order to succeed on an Eighth Amendment claim because such a rule would “permit any physical punishment, no matter how diabolic or inhuman, inflicting less than some arbitrary quantity of injury.” 503 U.S. at 10. Brooks also warrants more weight because the court in that case thoroughly examined whether there was a valid distinction between the force used and the injuries inflicted, where as in Fuentes, the court merely stated the “rule” without examining the issue in any detail. See also Felix v. McCarthy, 939 F.2d 699, 702 (9<sup>th</sup> Cir. 1991)(noting that the degree of injury inflicted is not the relevant inquiry for Eighth Amendment excessive force claims, but rather, the amount of force that was used).

Defendants' Motion for Summary Judgment insofar as it seeks to dismiss Plaintiff's Eighth Amendment claim against Defendant Cook.

**B. Eighth Amendment and Due Process Claims Against Defendants Snyder and Hawk**

Defendants also contend that Plaintiff's Eighth Amendment claims asserted against Defendants Snyder and Hawk should be dismissed because Plaintiff has not produced any evidence that these Defendants had any personal involvement in the incident between Plaintiff and Defendant Cook, and that these Defendants cannot be held liable for a Section 1983 violation under the doctrine of respondeat superior. (D.I. 43 at 11-12). However, the Court finds that Defendants' contentions misconstrue the nature of Plaintiff's allegations against Defendants Snyder and Hawk. Nowhere in Plaintiff's Complaint or his brief in response to the instant motion does Plaintiff allege that Defendants Snyder and Hawk should be held liable for the actions of Defendant Cook. Rather, Plaintiff asserts that Defendants Snyder and Hawk violated the Eighth and Fourteenth Amendments by (1) continuing to punish Plaintiff by placing him in "lock down," (2) taking away his job as "tier man," (3) not providing Plaintiff with a timely disciplinary hearing, and (4) "covering up" Defendant Cook's assault. (D.I. 2 at 5-7; D.I. 47 at 4). Since Defendants do not challenge these allegations in the instant motion, the Court will not address them.

**II. Defendants' Affirmative Defenses**

Defendants contend that, even if Plaintiff's claims cannot be dismissed on substantive grounds, Defendants are nonetheless entitled to summary judgment because: (1) Plaintiff's evidence only supports the conclusion that Defendants acted negligently, and negligence is not actionable under Section 1983, (2) the State Tort Claims Act and the doctrine of state sovereign

immunity shield Defendants from liability for any pendent State claims that Plaintiff may be asserting,<sup>7</sup> (3) Defendants are immune from monetary liability in their official capacities under the Eleventh Amendment, and (4) Defendants are immune from monetary liability in their personal capacities under the doctrine of qualified immunity. (D.I. 43 at 13-17).

**A. Immunity from Monetary Liability in Defendants' Official Capacities**

The Court concludes that Defendants are immune from monetary liability in their official capacities under the Eleventh Amendment. The Eleventh Amendment provides that “[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.” Furthermore, the United States Supreme Court has stated that:

Section 1983 provides a federal forum to remedy many deprivations of civil liberties, but it does not provide a federal forum for litigants who seek a remedy against a State for alleged deprivations of civil liberties. The Eleventh Amendment bars such suits unless the State has waived its immunity, or unless Congress has exercised its undoubted power under § 5 of the Fourteenth Amendment to override that immunity.

Will v. Michigan Dep't of State Police, 491 U.S. 58, 66 (1989)(citations omitted). In that regard, the Supreme Court has held that Congress did not intend to override a State's Eleventh Amendment immunity when it enacted Section 1983. Quern v. Jordan, 440 U.S. 332, 338 (1979). In addition, Section 1983 only allows claims against “person[s],” which does not include claims seeking monetary relief from State officials who are sued in their official capacities. Will, 491

---

<sup>7</sup> The Court concludes that Plaintiff's Complaint cannot be characterized as asserting any pendent state claims. Therefore, the Court will not address Defendants' contentions regarding sovereign immunity and the State Tort Claims Act.

U.S. at 71. Therefore, State officials sued in their official capacities for monetary damages can assert Eleventh Amendment immunity, but State officials cannot assert such immunity when sued for monetary damages in their personal capacities. Furthermore, claims against State officials for prospective injunctive relief are permissible under Section 1983. *Id.* at 71 n.10.

Applying the above standards, the Court concludes that to the extent Plaintiff seeks money damages from Defendants in their official capacities, such claim is barred by the Eleventh Amendment. However, insofar as Plaintiff seeks money damages from Defendants in their personal capacities<sup>8</sup> or seeks prospective relief, Defendants are not entitled to Eleventh Amendment immunity.

#### **B. Defendants' Contentions of Good Faith**

Defendants' remaining contentions in support of their Motion for Summary Judgment, including that Defendants only acted negligently and that Defendants are entitled to qualified immunity, require a factual finding that Defendants acted in good faith in order to be successful. The Court's conclusion above that, for purposes of the present motion, Plaintiff has sufficiently established that Defendant Cook acted maliciously and sadistically renders the argument that Defendant Cook acted in good faith moot. Further, Defendants offer no evidence to rebut Plaintiff's contentions that Defendants Snyder and Hawk continued to punish Plaintiff even after they knew that Defendant Cook had attacked Plaintiff without provocation; nor do Defendants offer any explanation why Plaintiff was not afforded a disciplinary hearing until approximately

---

<sup>8</sup> Although Plaintiff's pro se Complaint does not specifically name Defendants in their personal capacities, the Court will liberally construe the Complaint and conclude that Plaintiff is suing Defendants in both their official and personal capacities. *See West v. Keve*, 571 F.2d 158, 163 (3d Cir. 1978).

September 10, 1998. Therefore, the Court cannot accept Defendants' contentions that they are entitled to summary judgment because they merely acted negligently and in good faith.

### **CONCLUSION**

For the reasons discussed, the Court concludes that Defendants' Motion for Summary Judgment (D.I. 42) should be granted insofar as Plaintiff seeks money damages from Defendants in their official capacities. The Court further concludes that Defendants' Motion for Summary Judgment (D.I. 42) should be denied in all other respects.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ALLEN R. JOLLY, :  
 :  
 Plaintiff, :  
 :  
 v. : Civil Action No. 99-73-JJF  
 :  
 ROBERT COOK, Warden ROBERT :  
 SNYDER, and BARRY HAWLK, :  
 :  
 Defendants. :

**ORDER**

At Wilmington this 22 day of March, 2001, for the reasons set forth in the Memorandum Opinion issued this date; IT IS HEREBY ORDERED that:

1. Defendants’ Motion for Summary Judgment (D.I. 42) is **GRANTED** insofar as Plaintiff seeks money damages from Defendants in their official capacities.
2. Defendants’ Motion for Summary Judgment (D.I. 42) is **DENIED** in all other respects.

---

UNITED STATES DISTRICT JUDGE

