

United States District Court
For the Northern District of California

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E-Filed 5/27/11

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

XAVIER GONZALES,
Plaintiff,
v.
T. URIBE, et al.,
Defendants.

No. C 10-2442 RS (PR)

**ORDER GRANTING DEFENDANTS’
MOTION FOR SUMMARY
JUDGMENT**

INTRODUCTION

This is a federal civil rights action filed pursuant to 42 U.S.C. § 1983 by a *pro se* state prisoner. For the reasons stated herein, defendants’ motion for summary judgment is GRANTED as to all claims against all defendants.

BACKGROUND

This action arises from an attack on plaintiff on October 4, 2009 by Mark Gentle, who, like plaintiff, was an inmate at Salinas Valley State Prison (“SVSP”). The following facts are undisputed, unless noted otherwise. On October 4, 2009, plaintiff was housed in Facility A of SVSP, categorized by prison authorities as a “Protective Custody/ Sensitive Needs” inmate. Gentle was also in Facility C as an un-classified inmate pending his

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ORDER GRANTING MOT. FOR SUMM. J.

1 assignment to appropriate housing. Around noon that day, an inmate returned to his cell,
2 which was next to Gentle's. Correctional officer Uribe, working in the control booth, pushed
3 a button to open the door to that inmate's cell. At the same time, Uribe pushed the button
4 that opened Gentle's cell door. Uribe immediately tried to close Gentle's door when she saw
5 what she had done. Gentle, however, forced his way past the cell door as it was closing.
6 Around this time, plaintiff was in the showers. After leaving his cell, Gentle ran down the
7 stairs to where plaintiff was standing and struck plaintiff with his fists. Uribe shouted at
8 Gentle to stop and lie on the floor.¹ Correctional officers Valencia and Franklin, in response
9 to Uribe's shout, turned to see Gentle and plaintiff fighting, sounded their alarms, and ran to
10 stop the fight, which, with some difficulty, they did. Plaintiff claims that defendants violated
11 his Eighth Amendment rights by failing to protect him from the attack by Gentle. More
12 specifically, plaintiff alleges that (1) Uribe was responsible for releasing Gentle; and
13 (2) Valencia and Franklin failed to supervise Gentle properly.

14 DISCUSSION

15 I. Standard of Review

16 Summary judgment is proper where the pleadings, discovery and affidavits
17 demonstrate that there is "no genuine issue as to any material fact and that the moving party
18 is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Material facts are those
19 which may affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,
20 248 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a
21 reasonable jury to return a verdict for the nonmoving party. *Id.*

22 The party moving for summary judgment bears the initial burden of identifying those
23 portions of the pleadings, discovery and affidavits which demonstrate the absence of a
24 genuine issue of material fact. *Celotex Corp. v. Cattrett*, 477 U.S. 317, 323 (1986). On an
25 issue for which the non-moving party will have the burden of proof at trial, as is the case

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27 ¹ Plaintiff asserts that Uribe did not issue a verbal order to Gentle before he attacked
28 plaintiff, but he does not dispute that Uribe ordered Gentle to lie down during the attack. (Opp.
at 5-6.)

1 here, the moving party need only point out “that there is an absence of evidence to support
2 the nonmoving party’s case.” *Id.* at 325.

3 Once the moving party meets its initial burden, the nonmoving party must go beyond
4 the pleadings and, by its own affidavits or discovery, “set forth specific facts showing that
5 there is a genuine issue for trial.” Fed. R. Civ. P. 56(e). The court is only concerned with
6 disputes over material facts and “factual disputes that are irrelevant or unnecessary will not
7 be counted.” *Anderson*, 477 U.S. at 248. It is not the task of the court to scour the record in
8 search of a genuine issue of triable fact. *Keenan v. Allen*, 91 F.3d 1275, 1279 (9th Cir.
9 1996). The nonmoving party has the burden of identifying, with reasonable particularity, the
10 evidence that precludes summary judgment. *Id.* If the nonmoving party fails to make this
11 showing, “the moving party is entitled to judgment as a matter of law.” *Celotex*, 477 U.S. at
12 323.

13 **II. Eighth Amendment Duty to Protect**

14 Plaintiff alleges that defendants violated his Eighth Amendment rights by failing to
15 protect him from the violent attack by Mark Gentle. The Eighth Amendment requires that
16 prison officials take reasonable measures to guarantee the safety of prisoners. *Farmer v.*
17 *Brennan*, 511 U.S. 825, 832 (1994). In particular, prison officials have a duty to protect
18 prisoners from violence at the hands of other prisoners. *Id.* at 833. The failure of prison
19 officials to protect inmates from attacks by other inmates or from dangerous conditions at the
20 prison violates the Eighth Amendment only when two requirements are met: (1) the
21 deprivation alleged is, objectively, sufficiently serious; and (2) the prison official is,
22 subjectively, deliberately indifferent to inmate safety. *Farmer*, 511 U.S. at 834.

23 Regarding the deliberate indifference prong of this analysis, a prison official cannot be
24 held liable under the Eighth Amendment for denying an inmate humane conditions of
25 confinement unless the standard for criminal recklessness is met, i.e., the official knows of
26 and disregards an excessive risk to inmate health or safety. *See Farmer*, 511 U.S. at 837.
27 The official must both be aware of facts from which the inference could be drawn that a
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1 substantial risk of serious harm exists, and he must also draw the inference. *See id.* Neither
2 negligence nor gross negligence will constitute deliberate indifference. *See* at 835–36 & n.4;
3 *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). Allegations in a *pro se* complaint sufficient to
4 raise an inference that the named prison officials acted with deliberate indifference — i.e.,
5 that they knew that plaintiff faced a substantial risk of serious harm and disregarded that risk
6 by failing to take reasonable measures to abate it — states a “failure-to-protect” claim.
7 *Hearns v. Terhune*, 413 F.3d 1036, 1041–42 (9th Cir. 2005).

8 **A. Uribe’s Release of Gentle**

9 Plaintiff claims that Uribe violated his Eighth Amendment rights by causing the
10 circumstances under which Gentle was able to escape his cell and attack plaintiff. As to
11 these claims, defendants have met their *Celotex* burden by (1) presenting evidence that
12 Uribe’s release of Gentle was an accident, and not the result of deliberate indifference, (MSJ,
13 Uribe Decl. ¶¶ 4–5), and (2) pointing out that plaintiff has not presented any evidence that
14 Uribe knew of, and disregarded, a risk to plaintiff’s safety when she pressed the button to
15 Gentle’s cell (MSJ at 8).

16 Plaintiff, however, has not met his burden. Plaintiff avers only that Uribe “just let”
17 Gentle out of his cell. (Pl.’s Opp. to MSJ (“Opp.”) at 6). “Just let” fails to show a triable
18 issue of material fact. First, plaintiff’s assertion appears in his unverified opposition, and not
19 in the verified declaration, and therefore cannot be considered evidence. Second, “just let,”
20 even interpreted broadly, shows at worst negligence or gross negligence, which is
21 insufficient to show deliberate indifference. *See Farmer*, 511 U.S. at 835–36 & n.4. Plaintiff
22 also attempts to show a triable issue by asserting that Uribe’s state of mind is a matter of fact
23 for a jury. Such statements are legal conclusions, not evidence.

24 **B. Remedial Actions**

25 Plaintiff claims that Uribe, Valencia, and Franklin failed to take appropriate steps after
26 Gentle’s release. Plaintiff asserts that Uribe could have, but did not, issue a direct order to
27 Gentle over the loudspeaker, activate an alarm, fire a non-lethal round at Gentle, or inform
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1 nearby correctional officers of Gentle’s escape. (Pl.’s Opp. to MSJ at 5–6.) Plaintiff also
2 asserts that correctional officers Valencia and Franklin failed to act when Gentle “ran” past
3 them on his way to attack plaintiff. (*Id.* at 6–7.)

4 Defendants have met their *Celotex* burden by presenting evidence, undisputed by
5 plaintiff, that they took appropriate and timely action. First, Uribe asserts that she
6 immediately recognized her mistake and then attempted to prevent Gentle’s escape by
7 closing his door, though Gentle did escape. (MSJ, Uribe Decl. ¶¶ 4–5.) Second, defendants
8 have presented evidence, undisputed by plaintiff, that Valencia and Franklin could not act to
9 protect plaintiff until they became aware of Gentle’s presence, an apprehension delayed by
10 the fact that Gentle came from behind them. (*Id.*, D. Franklin Decl. ¶¶ 3–4; P. Valencia
11 Decl. ¶¶ 3–4.) Defendants could not act until Gentle was actually in contact with plaintiff
12 because Gentle ran from behind Valencia and Franklin and then toward plaintiff. Plaintiff
13 asserts that Valencia and Franklin failed to use effective means and simply “stood by and
14 watched” as Gentle attacked plaintiff. This is an insufficient evidentiary showing. Plaintiff
15 does not state how long the officers allegedly “stood by and watched.” The record indicates
16 that whatever delay occurred arose from the time it took defendants to understand what
17 events were happening. As noted above, Gentle’s direction of movement and speed
18 prevented the correctional officers from intercepting him before he reached plaintiff, and
19 further prevented them from acting for a few moments after Gentle reached plaintiff.

20 Plaintiff also alleges that defendants knew, or should have known, that Gentle was
21 dangerous, and therefore knew of a risk to plaintiff’s safety. The undisputed facts, however,
22 show that the release of Gentle was accidental. Defendants could not have accidentally
23 disregarded a risk to plaintiff’s safety. On such a record, defendants’ motion for summary
24 judgment is GRANTED in favor of Uribe, Valencia, and Franklin as to all claims.

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CONCLUSION

Defendants' motion for summary judgment (Docket No. 19) is GRANTED. The Clerk will enter judgment in favor of defendants T. Uribe, P. Valencia, and D. Franklin as to all claims, terminate Docket No. 19, and close the file.

IT IS SO ORDERED.

DATED: May 26, 2011


RICHARD SEEBORG
United States District Judge