

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MATTHEW LOISEAU,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	No. 15-4010
	:	
CITY OF PHILADELPHIA, et al.,	:	
	:	
Defendants.	:	
	:	

Goldberg, J.

July 25, 2017

MEMORANDUM OPINION

Plaintiff alleges that, while being held as a pre-trial detainee at the Philadelphia Industrial Correctional Center (“PICC”), he was assaulted by Correctional Officer Frederick Robinson on April 14, 2015. According to the allegations contained in the Second Amended Complaint, Robinson instigated a “verbal dispute” with Plaintiff and then sprayed pepper spray in Plaintiff’s face, beat Plaintiff on the back of his head with a walkie-talkie and punched Plaintiff in his “face, and body area.” (2d Am. Compl. ¶ 12.) Plaintiff filed this Section 1983 action against the City of Philadelphia and Robinson for violations of his Fourth and Fourteenth Amendment rights as well as state law claims for assault and battery, false arrest, malicious prosecution and intentional infliction of emotional distress.¹

Presently before me is a motion for summary judgment in which the City of Philadelphia urges that Plaintiff has adduced no evidence that a custom, policy or practice of the City was the

¹ The parties recently submitted and I approved a stipulation to dismiss the state law claims. Plaintiff also initially brought claims against Corizon Health, Inc., a private contractor which provides medical services for Philadelphia prisons. Plaintiff failed to respond to Corizon Health Inc.’s motion to dismiss and, on February 26, 2016, I granted Corizon Health, Inc.’s motion.

moving force behind Plaintiff's alleged constitutional injuries.² For the reasons that follow, the City's motion will be granted.

I. FACTUAL RECORD

In opposition to the City of Philadelphia's motion for summary judgment, Plaintiff offers the following:

Plaintiff asserts that "Defendant Robinson has also been implicated in another unprovoked attack on an inmate. Robinson also used pepper spray on Orlando Kelly, another pretrial detainee and then failed to get Kelly treatment." (Pl.'s Resp. p. 2.) Plaintiff, however, offers no evidence regarding this alleged attack. As such, the Court must disregard Plaintiff's unsupported assertion. See Betts v. New Castle Youth Dev. Ctr., 621 F.3d 249, 252 (3d Cir. 2010) ("Unsupported assertions, conclusory allegations, or mere suspicions are insufficient to overcome a motion for summary judgment").

Plaintiff also attaches what appears to be a grievance or an affidavit from another individual who alleges that correctional officers, without provocation, beat him while he was detained at PICC on October 5, 2015. (Pl.'s Resp., Ex. A.)

Citing a newspaper article from Philly.com, Plaintiff notes that "recently three PICC guards were charged with aggravated assault, conspiracy, simple assault and other offenses." (Id. at pp. 2-3.)³ According to the newspaper article, three correctional officers allegedly beat an individual incarcerated at PICC on June 21, 2016. (See <http://www.philly.com/philly/blogs/real-time/3-guards-charged-with-attacking-inmate-at-Philly-jail.html>, last accessed Apr. 20, 2017.)

² Defendant Frederick Robinson has not moved for summary judgment.

³ "Hearsay statements that would be inadmissible at trial may not be considered for purposes of summary judgment." Smith v. City of Allentown, 589 F.3d 684, 693 (3d Cir. 2009). Plaintiff failed to address the hearsay issues with the evidence he proffers. For example, he does not demonstrate how the newspaper article would be admissible at trial. As discussed below, even

II. STANDARD OF REVIEW

A party moving for summary judgment bears the initial burden of demonstrating that there are no genuine issues of material fact and that judgment is appropriate as a matter of law. Fed. R. Civ. P. 56(a); Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once a properly supported motion for summary judgment has been made, the burden shifts to the non-moving party, who must set forth specific facts showing that there is a genuine issue of material fact for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). An issue is “genuine” if a reasonable jury could rule in favor of the non-moving party based on the evidence presented. Kaucher v. Cnty. of Bucks, 455 F.3d 418, 423 (3d Cir. 2006). The non-moving party cannot avert summary judgment with conclusory, self-serving statements, but rather must cite to specific facts in the record. Kirleis v. Dickie, McCamey & Chilcote, P.C., 560 F.3d 156, 161 (3d Cir. 2009); Fed. R. Civ. P. 56(c).

On a motion for summary judgment, the court considers the evidence in the light most favorable to the non-moving party. Anderson, 477 U.S. at 256. Courts may not make credibility determinations at the summary judgment stage. Boyle v. Cnty. of Allegheny, Pa., 139 F.3d 386, 393 (3d Cir. 1998) (citing Petruzzi’s IGA Supermarkets, Inc. v. Darling-Delaware Co., Inc., 998 F.2d 1224, 1230 (3d Cir. 1993) cert. denied, 510 U.S. 994 (1993)). The same burdens and standards apply with regard to cross-motions for summary judgment. Appelmans v. City of Phila., 826 F.2d 214, 216 (3d Cir. 1987).

III. DISCUSSION

A municipality may be held liable for its employee’s violation of a citizen’s constitutional rights under section 1983, although not on a respondeat superior theory of liability.

assuming the newspaper article and grievance are admissible at trial, they fail to create a genuine issue of material fact as to the Monell claim against the City.

Monell v. Dept. of Soc. Servs. of City of New York, 436 U.S. 658, 690-92 (1978). To prevail on a Monell claim, a plaintiff must show a policy⁴ or custom⁵ created by a policymaker that caused the alleged constitutional violation. Natale v. Camden Cnty. Corr. Facility, 318 F.3d 575, 583–84 (3d Cir. 2003) (citing Bd. of the Cnty. Comm’rs of Bryan Cnty. v. Brown, 520 U.S. 397, 404 (1997)). To establish causation, “there must be an affirmative link between the policy and the particular constitutional violation alleged.” City of Oklahoma City v. Tuttle, 471 U.S. 808, 823 (1985).

If the policy at issue “concerns a failure to train or supervise municipal employees, liability under section 1983 requires a showing that the failure amounts to deliberate indifference to the rights of persons with whom those employees will come into contact.” Thomas v. Cumberland County, 749 F.3d 217, 222 (3d Cir. 2014) (internal quotation marks omitted). In most circumstances, a “pattern of similar constitutional violations by untrained employees is necessary to demonstrate deliberate indifference for purposes of failure to train.” Id. at 223.

Plaintiff argues that “the City of Philadelphia has a policy, practice or custom whereby PICC employees assault inmates in violation of their rights.” (Pls.’ Resp. p. 3.) Even viewed in the light most favorable to Plaintiff, the evidence proffered by Plaintiff – a grievance and newspaper article concerning two other assaults by correctional officers at PICC – falls woefully short of establishing the policy that Plaintiff ascribes to the City or demonstrating that the alleged

⁴A “[p]olicy is made when a ‘decisionmaker possess[ing] final authority to establish municipal policy with respect to the action’ issues an official proclamation, policy, or edict.” Andrews v. City of Philadelphia, 895 F.2d 1469, 1480 (3d Cir. 1990) (quoting Pembaur v. City of Cincinnati, 475 U.S. 469, 481 (1986)).

⁵“A custom is an act ‘that has not been formally approved by an appropriate decisionmaker,’ but that is ‘so widespread as to have the force of law.’” Natale v. Camden Cnty. Corr. Facility, 318 F.3d 575, 584 (3d Cir. 2003) (citing Bd. of the Cnty. Comm’rs of Bryan Cnty. v. Brown, 520 U.S. 397, 417 (1997)).

policy caused the constitutional violations Plaintiff claims. This evidence does not demonstrate that a pattern of correctional officer assault at PICC is so well established that it constitutes a custom for municipal liability purposes nor does this evidence speak to the policy to which the City allegedly adhered. In sum, Plaintiff has failed to point to evidence in the record that raises a genuine issue of material fact as to whether the City established a policy or custom that caused the constitutional violations Plaintiff alleges.

IV. CONCLUSION

For the foregoing reasons, the City of Philadelphia's motion for summary judgment will be granted. An appropriate order follows.