IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GREGORY G. BROWN,	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil No. 13-1186
	)	
ANDREW COULTER and	)	
ALLEGHENY COUNTY,	)	
	)	
Defendants	)	

MEMORANDUM OPINION

BLOCH, District J.

Presently before the Court is Defendant Allegheny County's Motion for Summary Judgment (Doc. No. 26). For the reasons set forth herein, the Defendant's motion will be granted.[1]

I. BACKGROUND

This is an action brought by Plaintiff raising various counts, including four (Counts Two, Four, Six, and Eight) against Defendant Allegheny County under 42 U.S.C. § 1983. Plaintiff asserts that this Court has jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331 and 1343. As set forth in the complaint, Plaintiff alleges that Defendant violated his rights under the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution under color of law. He seeks compensatory and punitive damages, attorney fees, interest, costs, and such other relief as the Court deems just and proper.

[1] Subsequent to the filing of the present motion, Plaintiff agreed to dismiss certain counts of the complaint, specifically those raising claims against Defendant Pfieffer and those raising state law causes of action (Count Five as to Pfieffer and Counts Seven, Nine, and Ten). By separate order filed on this date, the Court has dismissed those claims. The portions of the present motion pertaining to the dismissed counts are thus rendered moot.

II. FACTUAL BACKGROUND

The record as read in the light most favorable to Plaintiff establishes the following background.[2] Plaintiff is an individual who, between the months of July 2011 and October 2011, was incarcerated at the Allegheny County Jail ("ACJ"). Defendants Coulter and Pfieffer were and are employed as correctional officers at the ACJ. In August, Plaintiff was housed within the Level 5 Mental Health Unit 5C, but was cleared by an ACJ psychiatrist to return to the general population. Accordingly, on August 20, 2011, Plaintiff was transferred from his cell at the Mental Health Unit to the Level 5 Mental Health Unit 5C sally port.[3] Defendant Coulter, who was responsible for transporting Plaintiff from the sally port to a general population pod, was waiting for Plaintiff when he entered. After Plaintiff entered, an incident occurred which resulted in Plaintiff being struck by Coulter with a single blow to the head. Plaintiff fell to the ground and was handcuffed. Coulter notified ACJ officials that the altercation had occurred, and, as a result, additional correctional officers arrived at the scene and transported Plaintiff to the medical unit. From there, he was transported to the emergency room, where has received treatment for the injuries he sustained during the incident. He later received surgery at Allegheny General Hospital for his injuries.

Defendant Allegheny County has a policy regarding the circumstances under which reasonable force may be used by corrections officers and the level of force that is permissible. According to this policy, active countermeasures, such as strikes against inmates, are authorized

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[2] As noted, several of the claims in this case, including all against Defendant Pfieffer, have been dismissed. Further, Defendant Coulter does not seek summary judgment. Accordingly, the Court here sets forth only those facts relevant to the resolution of Defendant Allegheny County's motion for summary judgment on the claims against it.

[3] The sally port is an area with one door leading in from the housing unit and another leading into the hallway designed to increase security. Essentially, only one of the doors can be open at a time to minimize the chance of prisoner escape.

when an inmate aggressively approaches a corrections officer in a small, confined area. The amount of force that an officer may use is only that which is reasonable and necessary under the circumstances to effectively control the inmate. Inspector Christopher Kearns of the Allegheny County Police submitted a report on the incident involving Coulter and Plaintiff on September 19, 2011, concluding that Coulter did use force against Plaintiff but that under the facts and circumstances the force used appeared to be within the scope of the County's policy.

Defendant Coulter has had allegations of misconduct in his role as a corrections officer raised in the past. A disciplinary hearing was held on or around September 2, 2011, based on an incident that occurred on August 7, 2011 where Coulter failed to file a report regarding a use of force incident in the intake department that he witnessed. Coulter himself was not involved in the use of force. The record contains no further information regarding the processing of the alleged violation or its resolution. Another disciplinary hearing was held on or around November 4, 2011, based on an alleged violation by Coulter of the County's use of force and taser policy based on an incident where Coulter deployed his taser on an inmate. Significantly, no date appears in the record as to when this incident occurred, although Coulter first received notice on October 7, 2011 that a hearing had been scheduled. Coulter received a written reprimand from the Deputy Warden based on this incident on November 4, although, according to Coulter, the Warden later revoked the reprimand.

The record also contains evidence of two lawsuits filed against Coulter in his position as a corrections officer. The first was filed by an inmate named Robert Pamplin in 2010 based on an incident that occurred on March 13, 2008,[4] in the United States District Court for the Western District of Pennsylvania at Civil No. 10-227. The incident involved a physical altercation

[4] The date of the incident is a matter of public record at Civil No. 10-227. See, e.g., Doc. Nos. 2 and 37.

between Pamplin and Coulter in which Coulter slammed Pamplin against a wall and pinned him on the ground when he believed Pamplin was attempting to assault him. The case ultimately settled, and the record contains no information as to what, if any, investigation or remedial or disciplinary action was undertaken by the County regarding the incident. Coulter was also named, along with several other corrections officers, in a lawsuit filed by inmate Gary Barbour in the Western District in 2011 at Civil No. 11-1291. The suit stemmed from an incident involving an alleged escape attempt by Barbour on April 6, 2010 where he alleged that he was assaulted by corrections officers. Coulter, while part of the Critical Emergency Response Team that attempted to apprehend him, was not specifically accused of assaulting Barbour.[5] This case also settled, and the record contains no information as to what, if any, investigation or remedial or disciplinary action was undertaken by the County regarding the incident.

The complaint sets forth several other incidents in which it was alleged that ACJ guards used force far in excess of that necessary for any legitimate intention for correctional purposes and that the County was aware of such incidents but disregarded them and failed to take any appropriate action. One involved a pre-trial detainee named Keith Washington regarding an incident that occurred on August 7, 2007. Another involved an inmate named James Cotton regarding an incident that occurred in 2008. Another involved an inmate named Victorio Hinton regarding an incident that occurred in 2009. Still another involved a pre-trial detainee named David Kipp regarding an incident that occurred on October 13, 2010. It is specifically alleged that an ACJ guard named Arii Metz was charged with deprivation of Kipp's civil rights, and

[5] Many of the allegations in Barbour's case are also a matter of public record. Although Barbour amended his complaint twice, the allegations regarding Coulter remained vague throughout. Other than Barbour's allegation that all of the individual defendants punched him after he was down, the specific allegations regarding the use of force relate to other officers, which is also demonstrated in the record evidence in this case. (Doc. No. 37, Ex. 1 at 14-15).

Plaintiff acknowledges in his brief that Metz was fired as a result of the incident. However, other than the allegations made by Plaintiff, the record contains no information whatsoever about any of these alleged incidents.[6]

III. APPLICABLE LEGAL STANDARD

Summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(a). See also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986). The parties must support their position by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials." Fed. R. Civ. P. 56(c)(1)(A). "[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." Anderson, 477 U.S. at 247-48 (emphasis in original). A disputed fact is material if it might affect the outcome under the substantive law. See Boyle v. County of Allegheny, 139 F.3d 386, 393 (3d Cir. 1998) (citing Anderson, 477 U.S. at 247-48). Summary judgment is unwarranted where there is a genuine dispute about a material fact, that is, one where a reasonable jury, based on the evidence presented, could return a verdict for the non-moving party with regard to that issue. See Anderson, 477 U.S. at 248.

When deciding a motion for summary judgment, the Court must draw all inferences in a light most favorable to the non-moving party without weighing the evidence or questioning the witnesses' credibility. See Boyle, 139 F.3d at 393. The movant has the burden of demonstrating

[6] The complaint also references the Barbour and Pamplin cases discussed above.

the absence of a genuine issue of material fact, while the non-movant must establish the existence of each element for which it bears the burden of proof at trial. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). If the movant has pointed to sufficient evidence of record to demonstrate that no genuine issues of fact remain, the burden is on the non-movant to search the record and detail the material controverting the movant's position. See Schulz v. Celotex Corp., 942 F.2d 204, 210 (3d Cir. 1991). Rule 56 requires the non-moving party to go beyond the pleadings and show, through the evidence of record, that there is a genuine issue for trial. See Celotex, 477 U.S. at 324.

IV. DISCUSSION

Defendant Allegheny County seeks summary judgment on all of the counts of the complaint raising claims against it (Counts Two, Four, Six, and Eight), all of which raise claims pursuant to 42 U.S.C. § 1983. To raise a prima facie case under this statute, Plaintiff must demonstrate that a person acting under color of law deprived him of a federal right. See Berg v. County of Allegheny, 219 F.3d 261, 268 (3d Cir. 2000) (citing Groman v. Township of Manalapan, 47 F.3d 628, 633 (3d Cir. 1995)). Municipalities and other local government units are persons subject to liability under Section 1983. See Monell v. Dep't of Soc. Servs. of City of New York., 436 U.S. 658, 689 (1978). Allegheny County is such a municipality and therefore subject to potential liability under Section 1983.

However, a municipality such as Allegheny County cannot be held liable for the unconstitutional acts of its employees on a *respondeat superior* theory. See Monell, 436 U.S. at 691. To prevail on a claim against the County, Plaintiff "must demonstrate that the violation of his rights was caused by either a policy or a custom of the municipality." Berg, 219 F.3d at 275. See also Natale v. Camden County Correctional Facility, 318 F.3d 575, 583-84 (3d Cir. 2003).

"Policy 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." Berg, 219 F.3d at 275 (quoting Kneipp v. Tedder, 95 F.3d 1199, 1212 (3d Cir. 1996) (internal quotations omitted)). A custom is a course of conduct that, although not authorized by law, is so permanent, widespread, and well-settled as to virtually have the force of law. See Berg, 219 F.3d at 275; Natale, 318 F.3d at 584. A plaintiff must demonstrate "an affirmative link" or "plausible nexus" between the policy or custom and the alleged injury. See Bielevicz v. Dubinon, 915 F.2d 845, 850-51 (3d Cir. 1990).

Accordingly, there are three situations where the actions of a government employee may be deemed to have been caused by a policy or custom of the municipality for which the employee works, giving rise to municipal liability under Section 1983:

> (1) where the appropriate officer or entity promulgates a generally applicable statement of policy, and the subsequent act in question is an implementation of that policy;
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> (2) where no rule has been formally announced as policy, but a right has been violated by an act of the policymaker itself; or
>
> (3) where the policymaker has failed to act affirmatively, although the need to take some action to control the municipality's agents is so obvious, and the inadequacy of the existing practice so likely to result in the violation of constitutional rights, that the policymaker can reasonably be said to have been deliberately indifferent to the need.

See Natale, 318 F.3d at 584. The first two means of establishing a policy or custom do not apply here, as Plaintiff has not identified a specific policy alleged to have caused his injuries, nor has he claimed that a policymaker directly acted to cause the injuries, as Coulter clearly is not such a person. Instead, he claims that the third method applies, that is, that the County was deliberately

indifferent to the violations of constitutional rights caused by Coulter himself and guards at the ACJ in general.

A showing of deliberate indifference requires more than a showing of simple or even heightened negligence. See Berg, 219 F.3d at 276. Deliberate indifference is a "stringent standard" that requires a showing that "a municipal actor disregarded a known or obvious consequence of his action." Board of County Com'rs of Bryan County, Okl. v. Brown, 520 U.S. 397, 410 (1997). Such a standard can be met by showing a pattern of violations of which the municipality knew and in which it acquiesced. See Watson v. Abington Township, 478 F.3d 144, 155-56 (3d Cir. 2007); Beck v. City of Pittsburgh, 89 F.3d 966, 972 (3d Cir. 1996). However, "isolated acts of excessive force by non-policymaking municipal employees are generally not sufficient to demonstrate a municipal custom, policy, or usage that would justify municipal liability." Jones v. Town of East Haven, 691 F.3d 72, 81 (2d Cir. 2012). See also City of Oklahoma City v. Tuttle, 471 U.S. 808, 831 (1985) (Brennan, J., concurring in part and concurring in the judgment); Trevino v. Gates, 99 F.3d 911, 918 (9th Cir. 1996); Cahill v. Live Nation, 866 F. Supp. 2d 503, 521 (W.D. Pa. 2011) ("In order to survive summary judgment, Plaintiff must at least offer some evidence that the alleged custom or practice of violating citizens' constitutional rights involved more than a few isolated incidents by one or two inferior officers."). Plaintiff simply has not met this standard in this case.

First, as noted above, the record contains virtually no evidence regarding the incidents set forth in the complaint other than those involving Coulter. Since Plaintiff is opposing a summary judgment motion, he must go beyond the pleadings and show, through the evidence of record, that there is a genuine issue for trial. See Celotex, 477 U.S. at 324. No such evidence has been offered. Indeed, even if the Court were to assume, as a matter of public record, that lawsuits

relating to the incidents referenced in the complaint were, in fact, filed, there is still no evidence as to the validity of any of the claims or, more importantly, the County's reaction to or investigation of the matters, or whether or what remedial action was or should have been taken. In fact, in regard to the only incident for which Plaintiff provides any detail regarding the resolution of the matter, the one involving Kipp, he states that the incident resulted in the termination of the offending officer and the filing of criminal charges against him. Again, even assuming that Plaintiff's mere allegation that these incidents occurred is sufficient to prove that simple fact, there simply is no basis for a jury to find any kind of pattern of the County acquiescing in the conduct of its corrections officers in general based the record here.

Plaintiff also attempts to establish a more specific custom by the County of at least being deliberately indifferent toward the abusive behavior of Coulter, and, indeed, the incidents involving Coulter are at least substantiated by the record evidence. However, even for these incidents, the record is insufficient to establish a pattern of Allegheny County acquiescing in Coulter using unconstitutionally excessive force against inmates and/or pre-trial detainees that would rise to the level of deliberate indifference. As noted, there are four "prior" incidents involving Coulter alleged to be part of the pattern.[7] The first is the one at issue in the lawsuit filed by Pamplin at Civil No. 10-227, which involved an incident that occurred on March 13, 2008. Although it is the incident most similar to the present case, it also happened nearly three and a half years earlier. The next, the one at issue in the lawsuit filed by Barbour at Civil No. 11-1291, involved an incident that occurred on April 6, 2010. While that event was closer in time to the altercation at issue here, in that case, Coulter was but one of many corrections officers named as defendants, and the specific allegations as to the assault involved other

[7] As the Court will discuss below, there is only evidence that three of the incidents actually occurred prior to the event at issue in this case.

officers. As mentioned above, both of these cases settled, and in neither was there any finding that would substantiate that Coulter violated anyone's constitutional rights. Indeed, there is nothing in the record regarding the validity of the claims against Coulter or as to the County's reaction to or investigation of the matters. Likewise, there is no evidence of any corrective action the County did or should have taken.

Although there is slightly more evidence regarding the later incidents for which investigatory and/or disciplinary hearings were held, there is still insufficient evidence to establish that the County had timely knowledge of the incidents, or that it mishandled them. The incident that involved Coulter allegedly failing to file a report despite observing a use of force situation occurred on August 7, less than two weeks prior to the incident at issue here. While a hearing apparently was ultimately held, it was not until after Coulter's altercation with Plaintiff. Therefore, the County likely knew very little regarding the incident at the time of the altercation involving Plaintiff, as it had little time to investigate the matter by then. Moreover, although the record shows that the hearing on the incident involving Coulter's use of a taser was held on November 4, 2011, there is simply no evidence in the record that would establish when the incident actually occurred. Plaintiff has therefore failed to meet his burden of putting forth sufficient evidence to establish that the incident occurred prior to his altercation with Coulter. Indeed, based on the fact that the first notice of hearing regarding the taser incident was dated October 7, 2011, there appears to be a very good chance that the incident post-dates the incident at issue here. Moreover, other than the fact that the County did actually investigate these matters, the fact that Coulter received a later-revoked reprimand in regard to the latter incident, and Coulter's own brief descriptions of what happened, the record is sparse regarding these events. There is nothing regarding the resolution of the first issue at all, and nothing regarding

the nature of the investigation of either incident, or in relation to the evidence involved in those matters.

Therefore, the record evidence regarding these four events, only three of which could have actually formed the basis of a pattern existing at the time of the alleged violation here, does not demonstrate the existence of a custom that would warrant imposing Section 1983 liability on Allegheny County. From the little information provided, the events appear to bare very little similarity to one another. Only two likely occurred in time for the County to have had any substantial knowledge of at the time of the events of August 20, 2011. Further, there is no evidence as to the merits of any of the claims, or anything that would show that the County should have taken any corrective action at all, or, if so, what that action should have been. Furthermore, there is no evidence as to the County's investigatory and disciplinary methods in general and little or none as to the investigation and handling of the specific incidents themselves, and certainly no evidence that would bring into question the validity of the County's investigation of or reaction to any of these incidents.

This case is therefore significantly different from cases such as Beck. There, not only did the plaintiff provide evidence of a consistent pattern of complaints against one of the city's police officers for the excessive use of force, but also a great deal of evidence pointing out the systemic flaws in the city's "sterile and shallow" investigatory and disciplinary methods. 89 F.3d at 972-73. In finding that the city could be liable under Section 1983 for the officer's actions, the Third Circuit Court of Appeals emphasized that merely having a process of investigating complaints meant little when the system was inadequate. See id. at 974. This stands in stark contrast to the present case, where there is virtually no evidence that would challenge the County's method of handling any of the allegations against Coulter, or, for that

matter, those against any of the officers named or alluded to in the complaint. This case is more like ones such as Petrillo v. City of Philadelphia, No. Civ. A 96-5911, 1997 WL 363844 (E.D. Pa. June 16, 1997), where the record, which included little more than evidence of a handful of prior allegations against an officer, was found to be insufficient to establish an unconstitutional practice or pattern.

In short, even assuming the three, or arguably four, incidents identified by Plaintiff constitute a pattern of behavior, and not merely a few isolated incidents, he still "has an additional burden to further show why those prior instances deserved discipline and how the misconduct in those situations was similar to the present one." Cahill, 866 F. Supp. 2d at 521. The evidence presented does not do so. Accordingly, there is insufficient evidence for a jury to find that Allegheny County was deliberately indifferent to any pattern of violating the constitutional rights of inmates and/or pre-trial detainees by Coulter or any other ACJ corrections officers.

V. CONCLUSION

Therefore, for the reasons set forth herein, the Court finds that no genuine issues of material fact exist as to Counts Two, Four, Six, and Eight and that Defendant Allegheny County is entitled to the grant of summary judgment on those counts.

s/Alan N. Bloch
Alan N. Bloch
United States District Judge

Date: September 29, 2015

ecf: Counsel of Record