

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

GIANFRANCO CARTA, )  
 ) C.A. No. K11C-08-005 JTV  
 Plaintiff, )  
 )  
 v. )  
 )  
 CARL C. DANBERG, Commissioner )  
 of Department of Correction, CATHY )  
 ESCHERICH, and MICHAEL )  
 DELOY, )  
 )  
 Defendants. )

*Submitted: January 27, 2012*

*Decided: April 30, 2012*

Stephen A. Hampton, Esq., Grady & Hampton, Dover, Delaware. Attorney for Plaintiff.

Devera B. Scott, Esq., and Ryan P. Connell, Esq., Department of Justice, Dover, Delaware. Attorneys for Defendants.

*Upon Consideration of Defendants'*

*Motion To Dismiss*

*Plaintiff's Amended Complaint*

**GRANTED**

**VAUGHN, President Judge**

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### **OPINION**

In this civil action, the plaintiff, Gianfranco Carta, seeks damages for alleged violations of his civil rights which occurred while he was an inmate at Sussex Correctional Institution (“SCI”). Defendant Carl C. Danberg is Commissioner of the Department of Correction (“DOC”). At the time of the events of this case, defendant Cathy Escherich was Director of Central Offender Records (“COR”) in the Department of Correction. Defendant Michael Deloy was the Warden at SCI. The defendants have moved to dismiss the complaint under Rule 12(b)(6), on the grounds that the complaint fails to state a claim upon which relief can be granted.

### **FACTS**

The facts are taken from the complaint. On September 29, 2009 the plaintiff was attempting to pick up prescriptions from Happy Harry’s in Millsboro/Long Neck when he was accused of shoplifting. He was arrested and taken to a Justice of the Peace Court where a secured bond was set at \$500. The plaintiff was then taken to SCI. At approximately 10:00 p.m. that same day, a bail bondsman informed the plaintiff’s family that he, the bondsman, had posted the required bond. A member of the plaintiff’s family then went to SCI and called into the institution three times by telephone from the parking lot. The amended complaint alleges that in the first call the family member was told that the institution was not holding anyone by the plaintiff’s name. In the second call, she was informed that his paperwork was not complete. In the third call, she was told that he would not be released and had a court appearance the next morning. He was released the next morning at approximately 10:10 a.m.

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The complaint sets forth in detail acts of abuse which the plaintiff claims were inflicted upon him by correctional officers during that overnight stay. For purposes of this motion, it is sufficient to say that he alleges that he was assaulted.

### **STANDARD OF REVIEW**

When considering a defendant's motion to dismiss, a trial court should accept all well-pleaded factual allegations in the complaint as true, accept even vague allegations in the complaint as "well-pleaded" if they provide the defendant notice of the claim, draw all reasonable inferences in favor of the plaintiff, and deny the motion unless the plaintiff could not recover under any reasonably conceivable set of circumstances susceptible of proof.<sup>1</sup> This is sometimes referred to as the conceivability standard.<sup>2</sup>

### **DISCUSSION**

The plaintiff describes the period of time from 10:00 p.m. on September 29 to 10:10 a.m. on September 30 as an over-detention. In his amended complaint he alleges that the assault and the over-detention both violated his rights to due process and equal protection under the law, and his right to be free from cruel and unusual punishment, pursuant to 42 *U.S.C.* § 1983. He also alleges that the over-detention violated his rights under State statutes regarding release on bail.

The plaintiff brings his claim arising from the alleged assault against

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<sup>1</sup> *Cent. Mortg. Co. v. Morgan Stanley Mortg. Capital Holdings LLC*, 27 A.3d 531, 536-37 (Del. 2011).

<sup>2</sup> *Id.*

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defendants Danberg and Deloy. Defendant Escherich is involved only with the over-detention claim.

Under Rule 12(b) a motion to dismiss a complaint for failure to state a claim upon which relief can be granted may be filed in lieu of an answer. The defendants' Rule 12(b) motion in this case is a proper motion in the sense that it attacks the sufficiency of the complaint and does not add matters outside the complaint. The answer to the motion filed by the plaintiff has exhibits which consist of answers to interrogatories and excerpts from depositions taken in other cases filed in this Court involving three other inmates, a news article from Delaware On-line concerning one of those same inmates, a news article from WBOC involving a fourth inmate, and a memo prepared by the DOC Internal Affairs involving a fifth inmate.

Rule 12(b) provides, in pertinent part:

If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleadings to state a claim upon which relief can be granted, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56 . . .

In this case only the plaintiff, not the defendants, has offered matters outside the complaint. Under these circumstances, I exercise my discretion to exclude from consideration the matters outside the complaint which have been offered by the plaintiff and address the motion as a Rule 12(b)(6) motion, not a Rule 56 motion.

It is not alleged that defendants Danberg and Deloy were present during the activities that constituted the alleged assaults. They are supervisory officials.

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A State employee cannot be liable under 42 U.S.C. § 1983 “merely because those under his supervision violate the constitutional rights of another.”<sup>3</sup> Instead, the State officer can only be liable in a supervisory position if he was the “moving force [behind] the constitutional violation,” or “exhibited deliberate indifference to the plight of the person deprived.”<sup>4</sup> “While supervisory liability does exist under Section 1983, it is based on actual knowledge and acquiescence and not *respondeat superior*.”<sup>5</sup>

The claim of liability against defendants Danberg and Deloy for the alleged assaults is based upon the following identical allegation contained in the respective count for each defendant:

Defendant Danberg [and Deloy] had actual knowledge that a culture of violence existed at SCI in which C/Os, without justification, frequently physically abused inmates who displeased them in any way, especially if the inmates were smaller and weaker than them, or impaired by intoxication. Some such cases of which Defendant Danberg was aware include *Bishop v. Taylor, et al.*, C.A. No. 07C-07-040 RBY; *Kalm v. Kearney, et al.*, C.A. No. 08C-09-048 RBY; *Bramble v. Nelson*, C.A. No. 07C-10-030 JTV; *Sully v. Danberg, et al.*, C.A. No. 11C-06-029 JTV; and the case of Marc Nelson, who appeared at the intake at SCI in 2007 in a highly intoxicated state, such that he could barely stand

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<sup>3</sup> *Collins v. Figueira*, 2006 WL 1817092, at \*3 (Del. Super. June 23, 2006) (citing *Alley v. Taylor*, 2001 WL 337245, \*3 (Del. Super. Mar. 30, 2001)).

<sup>4</sup> *Collins*, 2006 WL 1817092, at \*3 (quoting *Alley*, 2001 WL 337245, at \*3).

<sup>5</sup> *Collins*, 2006 WL 1817092, at \*3 (quoting *Alley*, 2001 WL 337245, at \*3).

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or open his eyes. Because he was incapable of following the instructions of the C/Os, they beat him, pepper sprayed him and allowed their dog to bite him.

Judging from the case numbers on the cases to which the pleading refers and the year given for the Nelson incident, the incidents underlying those cases would appear to have allegedly occurred over a period of at least three calendar years, 2007, 2008 and 2009. Bearing in mind the standard of liability under 42 U.S.C. § 1983, described above, which applies to the defendants in this case, I conclude that the existence of a few cases of alleged inmate abuse over the period of time involved here, accepted as true, is, without more, insufficient to plead a claim against the defendants upon which relief can be granted under 42 U.S.C. § 1983.

Turning to over-detention, the plaintiff discusses a Wilmington News Journal article in which it was written that there were problems in the Department of Correction resulting in the early release of some inmates and over-serving of sentences by other inmates. He argues that part of the reason that the over-detention issue has not been corrected is the defendants' decision to keep the Central Records office open for limited hours. He argues that since Delaware has a 24 hour police force and a 24 hour court (JP Court), it should conduct bail releases 24 hours a day.

However, the News Journal article discusses an issue relating to release of sentenced Level V inmates, not pre-trial detentioners. Calculation of release dates for sentenced inmates is not involved in this case. Therefore, the contents of the News Journal article have no bearing on this case. The only case relied upon by the

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plaintiff is also one involving a sentenced Level V inmate.<sup>6</sup>

The plaintiff appears to contend that DOC has a constitutional and statutory duty to process bail releases 24 hours a day. The plaintiff cites no authority to support this principle, and I am aware of none. I reject the contention that a defendant who posts a bail in late night hours and is released the next morning has suffered a violation of constitutional or statutory rights. I also find that these facts are insufficient to plead a cause of action against the defendants under 42 U.S.C. § 1983, or to plead a violation of State statutes.<sup>7</sup>

Therefore, the defendants' Motion to Dismiss is ***granted***.

**IT IS SO ORDERED.**

/s/ James T. Vaughn, Jr.

cc: Prothonotary  
Order Distribution  
File

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<sup>6</sup> See *Wilson v. Taylor*, 597 F. Supp. 2d 451 (D. Del. 2009).

<sup>7</sup> It is also worth noting that some bails are posted in the Superior Court and the Court of Common Pleas. Both of those courts have normal business hours. A defendant who fails to post a bail by the end of the normal business day must wait until the opening of court the next morning to post bail.