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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GEORGE WILLIAMS, JR.,)	
)	
Plaintiff,)	Case No. C08-1180-RAJ-JPD
)	
v.)	
)	
ROBERT J. PALMQUIST, <i>et al.</i> ,)	REPORT AND RECOMMENDATION
)	
Defendants.)	
_____)	

INTRODUCTION AND SUMMARY CONCLUSION

Plaintiff George Williams has filed a civil rights action pursuant to *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971), to allege violations of his constitutional rights during the course of his confinement in the Federal Detention Center at SeaTac, Washington (“FDC SeaTac”) in 2007. Specifically, plaintiff alleges in his amended complaint that he was assaulted on various occasions by FDC SeaTac employees, that he was denied access to showers, bedding, and mail while on suicide watch, and that he was denied adequate medical care. (*See* Dkt. No. 8 at 4-8.) Plaintiff’s claim of inadequate medical care was previously dismissed based upon plaintiff’s failure to exhaust that claim through the Bureau of Prisons administrative remedy process. (*See* Dkt. Nos. 37 and 39.)

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1 Defendants have now filed a motion for summary judgment seeking dismissal of plaintiff's
2 remaining claims.¹ Plaintiff has filed a document entitled "Motion asking the Court to not Grant
3 Defendants Motion to Dismiss and/or for Summary Judgment" which the Court construes as a
4 response to defendants' motion, and defendants have filed a reply brief in support of their motion.

5 The Court, having reviewed defendants' motion, plaintiff's response thereto, and the balance
6 of the record, concludes that defendants' motion should be granted with respect to all of plaintiff's
7 excessive force claims, and denied with respect to plaintiff's claims that he was denied showers,
8 bedding, and mail while on suicide watch.

9 BACKGROUND

10 Plaintiff was confined at FDC SeaTac from March 24, 2006, until October 18, 2007, while
11 awaiting resolution of federal criminal charges filed against him in the Western District of
12 Washington, Tacoma Division.² (Dkt. No. 67 at 2.) During the course of his confinement at FDC
13 SeaTac, plaintiff spent a considerable amount of time in the Special Housing Unit ("SHU"). (See
14 Dkt. No. 67, Ex. J at 1-2.) The SHU houses inmates designated for either administrative detention or
15 disciplinary segregation. (See Dkt. No. 67 at 4.) Administrative detention is a non-punitive

16
17 ¹ Plaintiff identified 16 defendants in his amended complaint. However, the United States
18 Marshal was not able to effect service on five of the named defendants because those individuals
19 could not be found. (See Dkt. Nos. 11-15.) The pending summary judgment motion is brought by
20 the 11 individuals who have been served: Robert J. Palmquist, Ronald Munoz, Marty Patrick, Kevin
Steele, Nichole Hayden, Katherine Skillestad Winans, Cynthia Low, Robert Lone, Keith Evans,
Larry Carlson, and Eahou Davis.

21 ² On October 18, 2007, plaintiff went to court and entered a guilty plea to a charge of felon in
22 possession of a firearm - armed career criminal. (See CR06-5267-FDB, Dkt. No. 61.) The plea was
23 accepted and plaintiff was sentenced to 10 years incarceration. (*Id.* at 61 and 62.) Plaintiff was
24 thereafter transferred to the Federal Correctional Institution at Sheridan, Oregon to serve his
25 sentence. (See Dkt. No. 67, Ex. J at 1.) On October 16, 2008, plaintiff was returned to the custody of
26 the United States Marshal and he is now incarcerated at the Lane County Jail in Eugene, Oregon
where he is awaiting trial on federal charges of assaulting United States government employees. (See
Dkt. No. 67 at 2 and Dkt. No. 81.)

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1 designation which is invoked when the continued presence of an inmate in the general population
2 would pose a threat to the safety of the inmate or others, would pose a threat to property, or would
3 pose a threat to the secure and orderly operation of the facility. (Dkt. No. 67 at 4.) Disciplinary
4 segregation is a punitive designation which is invoked as a sanction for misconduct and involves the
5 separation of an inmate from the general population for a specified period of time. (*Id.*) The record
6 reflects that plaintiff was assigned to the SHU for both administrative and disciplinary reasons during
7 the course of his confinement at FDC SeaTac. (*See* Dkt. No. 67, Ex. J at 1-2.)

8 Plaintiff also spent a significant amount of time on suicide watch during the course of his
9 confinement at FDC SeaTac. (*See id.*) The suicide watch cell is located in the Health Services Unit
10 of FDC SeaTac. (Dkt. No. 67 at 5.) Inmates who are deemed suicidal, based on either exhibited
11 behaviors or statements, are immediately placed on suicide watch. (*Id.*) Inmates who are on suicide
12 watch status remain under constant observation for the duration of their stay in the suicide watch cell.
13 (*Id.*) Personal items are not issued to inmates on suicide watch status unless those items are approved
14 by the Chief Psychologist or her designee. (*Id.*) Once an inmate is judged to no longer be suicidal, a
15 psychologist will terminate the suicide watch. (*Id.*)

16 Plaintiff was placed on suicide watch status in response both to statements threatening self-
17 harm and to actual attempts to inflict self-harm. (*See* Dkt. Nos. 65, 66 and 68 and attached exhibits.)
18 Despite plaintiff's numerous threats and attempts to inflict self-harm, the BOP psychologists who
19 interacted with plaintiff during his incarceration at FDC SeaTac generally believed that plaintiff was
20 merely engaging in acting out behavior and was not truly suicidal. (*See id.*)

21 The claims asserted by plaintiff in his amended complaint all relate to times when plaintiff
22 was either on suicide watch, or was being transferred to or from suicide watch. Specifically, plaintiff
23 alleges that: (1) he was assaulted by corrections officials on August 16, 2007, after he attempted to
24 hang himself in his cell in the SHU, and again when he arrived in the Health Services Unit after
25

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1 being transported from the SHU back to the suicide watch cell; (2) he was assaulted again on October
2 17, 2007; (3) he was denied showers, blankets, and access to his mail while confined in the suicide
3 cell from the end of July 2007 to the end of August 2007, and again from the middle of September
4 2007 to October 18, 2007; and, (4) he was assaulted by Special Operations Response Team
5 (“SORT”) members on a number of occasions between August 16, 2007, and October 18, 2007.
6 (Dkt. No. 8 at 4-7.) Plaintiff asserts that defendants’ conduct violated his right to be free from cruel
7 and unusual punishment and his right to due process. (*See id.* at 9.)

8 DISCUSSION

9 Defendants move for summary judgment on the grounds that plaintiff has failed to establish
10 that his claims of excessive use of force are sufficient to establish a constitutional violation.
11 Defendants also argue that plaintiff’s claims fail to allege personal involvement with the requisite
12 specificity. Defendants submitted in support of their summary judgment motion numerous
13 declarations from individuals with knowledge of relevant facts as well as excerpts of video taken of
14 various incidents in which plaintiff was involved during the course of his incarceration at FDC
15 SeaTac. Plaintiff submitted a short brief in response to defendants’ motion in which he argues that
16 he can prove his rights were violated. Plaintiff also submitted an affidavit in support of his
17 responsive brief in which he responds more directly to the arguments made by defendants in their
18 motion. Finally, plaintiff submitted his own set of videos for the Court’s consideration.³

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21 ³ After briefing on defendants’ summary judgment motion was completed, plaintiff submitted
22 a notice indicating that he would be filing his own set of videos in support of the affidavit which he
23 filed in support of his response to defendants’ summary judgment motion. (*See* Dkt. No. 73.)
24 Plaintiff asserts in his notice of filing that defendants tampered with the videos which they submitted
25 to the Court so that they show none of defendants’ wrongdoing. (*See id.* at 3.) This Court has
26 reviewed all of the videos submitted by the parties and, while there appear to be some minor
differences between the two sets of videos, there do not appear to be any substantive differences.

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1 Summary Judgment Standard

2 Summary judgment is proper only where "the pleadings, depositions, answers to
3 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
4 genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of
5 law." Fed.R.Civ.P. 56(c). The moving party has the burden of demonstrating the absence of a
6 genuine issue of material fact for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257 (1986).
7 Genuine disputes are those for which the evidence is such that a "reasonable jury could return a
8 verdict for the nonmoving party." *Id.* Material facts are those which might affect the outcome of the
9 suit under governing law. *Id.*

10 In response to a properly supported summary judgment motion, the nonmoving party may not
11 rest upon mere allegations or denials in the pleadings, but must set forth specific facts demonstrating
12 a genuine issue of fact for trial and produce evidence sufficient to establish the existence of the
13 elements essential to his case. *See* Fed. R. Civ. P. 56(e). A mere scintilla of evidence is insufficient
14 to create a factual dispute. *See Anderson*, 477 U.S. at 252. In ruling on a motion for summary
15 judgment, the court is required to draw all inferences in a light most favorable to the non-moving
16 party. *Id.* at 248. The court may not weigh the evidence or make credibility determinations. *Id.*

17 Bivens Standard

18 In order to sustain a cause of action under *Bivens*, a plaintiff must satisfy the requirements of
19 an action pursuant to 42 U.S.C. §1983, except for the substitution of a federal actor in place of a state
20 actor. *Van Strum v. Lawn*, 940 F.2d 406, 409 (9th Cir. 1991). Accordingly, a plaintiff must show (1)
21 that he suffered a violation of rights protected by the Constitution or created by federal statute, and
22 (2) that the violation was proximately caused by a person acting under color of federal law. *See*
23 *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). To satisfy the second prong, a plaintiff must
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