

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

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MANUEL LUQUE BARAHONA,  
Plaintiff,

v.

MEMORANDUM and ORDER

DEPUTY THOMPSON and JEFFERSON COUNTY  
SHERIFF,

06-C-723-S

Defendants.

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Plaintiff Manuel Luque Barahona was allowed to proceed on his Eighth Amendment claim against defendants Deputy Thompson and Jefferson County Sheriff. In his amended complaint plaintiff alleged that defendant Thompson "orchestrated the battery and assault on him by white inmates."

On April 9, 2007 defendants moved for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of facts, conclusions of law, an affidavit and a brief in support thereof. Pursuant to this Court's January 26, 2007 scheduling order plaintiff's response to this motion was to be filed not later than April 29, 2007 and has not been filed to date.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by both parties of affidavits and other supporting materials and, if

not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

#### FACTS

For purposes of deciding defendants' motion for summary judgment the Court finds that there is no genuine dispute as to any of the following material facts.

Plaintiff Manuel Luque Barahona is an adult residing at California City Prison in California City, California. Defendant Deputy Thompson is employed at the Jefferson County Jail.

Plaintiff was brought to Jefferson County Jail by the United States Marshal on December 29, 2005 as a pre-trial detainee awaiting trial on various immigration violations. He was booked into the Jefferson County Jail by Deputy Scott Yambor. Plaintiff did not express any fears for his safety. Deputy Yambor placed plaintiff in Unit B because it was the least populated housing unit at the time. Other Hispanic inmates were housed in Unit B.

At approximately 8:00 p.m on December 29, 2005 plaintiff and an inmate argued about the television. Plaintiff rose from his seat, removed his shirt and shoved Braun. Braun shoved plaintiff. Then plaintiff and Braun began to fight physically. The fight moved from the day room into a nearby dorm unit but lasted less than a minute.

A few hours later Deputy Novotny noticed that plaintiff had sustained injuries. Plaintiff refused to tell Deputy Novotny what had happened. Deputy Galbraith brought the plaintiff to the booking area to question him. Plaintiff identified Daniel Braun as his assailant by looking at a booking photograph. Plaintiff did not advise that the fight between him and Daniel Braun was in any way caused by jail personnel.

Deputy Galbraith photographed plaintiff's injuries. He was then transported to a local hospital for treatment. A criminal complaint was issued against Daniel Braun for battery to an inmate.

After plaintiff's return from the hospital he was placed in a segregation unit for three days to recover from his injuries. He was then placed in Unit D.

On February 29, 2006 Plaintiff testified against Daniel Braun at a preliminary hearing. He testified that Braun attacked him over a dispute concerning the television.

#### MEMORANDUM

Plaintiff claims that defendants violated his Eighth Amendment rights by being deliberately indifferent to his safety when they failed to protect him from an assault by another inmate. In opposing defendants' motion for summary judgment plaintiff cannot rest on the mere allegations of his pleadings but must submit evidence that there is a genuine issue of material fact for trial. Plaintiff has failed to submit any affidavit or other evidence which contradicts the affidavits submitted by the defendants. There is no genuine issue of material fact, and this case can be decided on summary judgment as a matter of law.

Deliberate indifference is a subjective standard which requires that the defendants knew that plaintiff was at risk of serious harm and acted with callous disregard to this risk. An official must both be aware of the facts from which the inference could be drawn that a substantial risk of serious harm exists and

must also draw the inference. Farmer v. Brennan, 511 U.S. 825, 834 (1994).

Plaintiff has submitted no evidence that defendant Thompson knew that plaintiff was at risk for serious harm when he was placed by Deputy Yambor in Unit B. Further, there is no evidence that defendant Thompson acted with callous disregard to any risk. It is undisputed that plaintiff and Braun commenced a physical fight after a verbal disagreement over the television. There is no evidence that defendant Thompson could have known that this disagreement would have occurred nor done anything to prevent it from occurring.

Defendants Thompson and the Jefferson County Sheriff were not deliberately indifferent to plaintiff's safety at the Jefferson County Jail. As a matter of law defendants did not violate plaintiff's Eighth Amendment rights. Accordingly, defendants motion for summary judgment will be granted.

Plaintiff is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claim must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7<sup>th</sup> Cir. 1997).

#### ORDER

IT IS ORDERED that defendants' motion for summary judgment is GRANTED.

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IT IS FURTHER ORDERED that judgment be entered in favor of defendants against plaintiff DISMISSING his complaint and all claims contained therein with prejudice and costs.

Entered this 4<sup>th</sup> day of May, 2007.

BY THE COURT:

S/

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JOHN C. SHABAZ  
District Judge