

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

HENRY MU, :
Plaintiff, :
 :
v. : C.A. No. 15-187PAS
 :
OMNI HOTELS MANAGEMENT :
CORPORATION (a/k/a “Omni Hotels”), :
and JOHN DOES 1-20, :
Defendants. :

DECISION AND ORDER

PATRICIA A. SULLIVAN, United States Magistrate Judge.

Plaintiff Henry Mu resides in a luxury apartment building known as The Residences, which is immediately contiguous to a hotel (“the Omni”) operated by Defendant, Omni Hotels Management Corporation (“Omni”). According to Plaintiff’s version of the incident, at approximately 2:30 a.m. on August 24, 2014, he was waiting outside his apartment building for his girlfriend and observed “a bunch of kids” in front of the Omni who confronted and chased a “black kid” they seemed to know. Plaintiff asked the Omni valet to get help, but he refused and left to park a car. When the group returned with beer, Plaintiff, believing they could be dangerous, retreated to the sanctuary of the Omni lobby and asked the night manager to call the police; at 2:45 a.m., she called hotel security and, soon after, tried to place a 911 call to the police. However, within “seconds,” between five and seven members of the group entered the lobby and pushed Plaintiff down; one of them swung a small table, breaking Plaintiff’s arm. Then, fearful of being caught, all of them fled. They were gone by the time an Omni security guard arrived in the lobby. Plaintiff links the individuals who attacked him with intruders evicted by Omni’s security guards from an Omni guestroom earlier in the evening because no

registered guest was present and because other hotel guests had complained about noise, a loud party and the smell of marijuana.

Based on this incident, Plaintiff has sued Omni for negligence, claiming that it breached its legal duty to implement security measures to protect him from the reasonably foreseeable wrongful conduct of third parties, resulting in his broken arm. Omni has challenged the viability of this claim with a motion for summary judgment asserting that the undisputed facts establish that it is entitled to judgment as a matter of law. ECF No. 17. Because Plaintiff has presented no evidence to establish the existence of a legal duty, the applicable standard of care or proximate cause,¹ Omni's motion for summary judgment is granted.²

I. FACTUAL BACKGROUND³

Omni operates a hotel located in Providence, Rhode Island; it has several hundred guest rooms, a fitness facility and pool, and offers valet parking. Omni Statement of Undisputed Facts ("SUF") ¶¶ 1-2; Lebron Dec. ¶ 1. The hotel is immediately adjacent to, and partially conjoined to, a luxury apartment building called The Residences. Omni SUF ¶ 3; see Mu Dep. at 24-25. Plaintiff has owned an apartment at The Residences for approximately five years. Mu Dep. at 12-19, 23. Because of the juxtaposition of the Omni with The Residences, Plaintiff was on Omni

¹ Omni's motion also asked for judgment as a matter of law on the defenses of assumption of the risk and independent intervening cause based on the testimony of its witnesses, which permits the inference that Plaintiff was the instigator of the confrontation. Plaintiff's contrary testimony establishes material factual disputes that require the rejection of this aspect of Omni's motion.

² In his complaint, Plaintiff included a claim for battery against Omni and certain unknown John Doe defendants. At oral argument, Plaintiff stated that he was not pressing his claim for battery against Omni.

³ These facts are drawn from the parties' statements of undisputed facts, Plaintiff's deposition, the witness declarations and other evidence proffered by the parties. Omni has proffered, as undisputed, facts that are disputed by Plaintiff. On his part, Plaintiff has disputed virtually every fact willy-nilly, including some proven by his own deposition testimony. To cut through the morass, the story is told here as it emerges from the record presented by the parties, including disputed facts that are necessary for background. As indicated in the text, by focusing on Plaintiff's version of the events, as told through the admissible evidence, and drawing every inference in Plaintiff's favor, the Court was able to distill the case down to the set of facts appropriate to the determination of whether there is a trial-worthy dispute.

property virtually every day, using its fitness facility to exercise and its valet service to park his car; he often walked through the hotel lobby to access the sky walk that connects to the Providence Place Mall. Mu Dep. at 23-24. On the evening of August 23, 2014, Plaintiff had spent several hours, “around midnight,” in his apartment at The Residences entertaining his parents, who were visiting and staying at the Omni. Mu Dep. at 31, 53-54.

The events at issue began shortly after 2:00 a.m. on August 24, 2014. At that time, Omni had two security guards on duty, both of whom were present and patrolling the hotel. Attah Dec. ¶ 2; Pfefferle Dec. ¶ 2. According to the Omni’s security records, at 2:10 a.m., a complaint from another guest regarding noise of a party and the smell of “pot” emanating from Room 407⁴ resulted in the discovery of a group of up to fifteen to twenty people in Room 407 with no registered hotel guest present; as a result, between 2:15 and 2:22 a.m., both security guards became involved and the group was evicted from the room and escorted from the hotel premises. Duarte Dec. Ex. A at 4, Ex. B; Attah Dec. ¶¶ 4-5; Pfefferle Dec. ¶¶ 4-5. Plaintiff hotly disputes whether all of them actually left the building.⁵ Omni’s security guards both aver that the group

⁴ Omni’s records and witnesses repeatedly refer to “noise” emanating from Room 407. Duarte Dec. Ex. A at 5; Lebron Dec. ¶ 2; Attah Dec. ¶ 3; Pfefferle Dec. ¶ 3. Only one record reflects a complaint made by the occupant of another room on the fourth floor about the smell of marijuana and the sound of a party; however, this reference does not specify the room number about which the complaint was lodged. Duarte Dec. Ex. A at 4. Omni argues that there is no evidence linking that reference to the group in Room 407. Mindful of the need to draw all inferences in favor of Plaintiff, for purposes of this motion, I accept that this reference permits the inference that Omni was aware that the sound of a party and the smell of marijuana was caused by the conduct of the non-guests in Room 407.

⁵ Based on the discrepancy among various versions of the number of non-guests in Room 407, see Attah Dec. ¶ 3 (“I observed that there were at least 4 people”); Pfefferle Dec. ¶ 3 (“I observed that there were at least 6 people”); Duarte Dec. Ex. A at 5 (“about 15 people in the room”); Duarte Dec. Ex. B (“Room 407 was evicted of approx. 20 guest’s”), and the number seen exiting the lobby escorted by hotel security according to the Omni valet, Danny Lebron (“approximately a dozen”), Lebron Dec. ¶ 3, Plaintiff argues the inference that some of the individuals evicted from Room 407 were not escorted off the premises but managed to avoid security and stayed behind inside the hotel. This thesis is contradicted by Plaintiff himself who described seeing a crowd of twenty on the street. Mu Dep. at 36. It is also contradicted by the uncontroverted declarations of Omni staff who were involved in or observed the evictions from Room 407; they aver that all were escorted off the premises. Attah Dec. ¶¶ 4-5; Pfefferle Dec. ¶¶ 4-5; see Lebron Dec. ¶¶ 2-3. More importantly, if the Court were to accept that Plaintiff has raised a real factual dispute over this point, it is simply not material. Plaintiff was not attacked by trespassers evicted from Room 407 who secreted themselves elsewhere in the hotel – Plaintiff’s testimony unequivocally establishes that his attackers came from the street. See Alqasim v. Capitol City Hotel Investors, 989 So.2d 488, 492-92 (Ct. App. Miss.

that they evicted from Room 407 left the hotel quickly and without incident. Attah Dec. ¶ 5 (individuals evicted from Room 407 and escorted from hotel were “polite and compliant, and even apologetic”); Pfefferle Dec. ¶ 5 (same). There is no evidence permitting the inference either that the group became violent or that anything happened during the eviction to put the Omni on notice that they would become violent later in the evening.⁶

Danny Lebron, the Omni parking valet stationed in front of the hotel to assist hotel guests with valet parking,⁷ heard the hotel security report that a group was being evicted for “noise” because the registered guest was not present; soon after he watched a group (approximately a dozen people, mostly male) leave the hotel with security behind them, walk down the street and out of sight. Lebron Dec. ¶¶ 2-3. There is no evidence suggesting that Lebron saw anything as they exited to permit the inference that the group would be violent later.

As Lebron tells the story, sometime later, some of the evicted group returned to the public street outside the Omni. Lebron Dec. ¶ 4. Before Plaintiff arrived, Lebron saw them congregating on the street, being “rowdy,” with a fight breaking out among themselves that was

2008) (because alleged broken lock permitting entry into hotel could not be proximate cause of crime committed outside in hotel parking lot, factual dispute regarding whether hotel checked doors and knew lock was broken fails to create genuine issue of material fact).

⁶ Plaintiff argues that the Court should infer from the guest complaint that they had been noisy and were smoking “pot” that the group evicted from Room 407 was inebriated from alcohol, which in turn permits the inference they would later turn to violence directed at others. *See* Duarte Dec. Ex. A at 4. To buttress this bootstrapping of inference on inference, Plaintiff points to two Omni security reports, which state that one of the security officers escorted “some the gentlemen off property via the Narragansett pre-function exit,” but fails to explain why that reference supports the inference of drunkenness. Duarte Dec. Exs. I, M. More to the point, Plaintiff also relies on the presumption that a “melee” is foreseeable to those who intentionally serve alcohol to underage party guests, as established in *Martin v. Marciano*, 871 A.2d 911, 917 (R.I. 2005). These arguments simply do not work; there is no evidence suggesting that the Room 407 group was underage, and nothing beyond mere speculation to suggest that they were drunk or had been drinking alcohol or that they otherwise fell into a category that presumptively would become violent.

⁷ Lebron is employed by a separate entity, which provides valet services to Omni. Lebron Dec. ¶ 1. At the hearing, Omni represented that he may be treated as its agent for purposes of this motion for summary judgment.

broken up. Lebron ¶ 4.⁸ There is no evidence that this rowdiness or fighting among themselves resulted in injury to anyone or that any third party (like Lebron) who was also on the street felt at risk. It is undisputed that this group was still there when Plaintiff arrived on the scene.

According to Plaintiff's version, which controls for purposes of this motion, Plaintiff came down from his apartment in The Residences to await the arrival of his girlfriend; they were planning to hang out. Mu Dep. at 33-34. While he waited, he and Lebron chatted and watched the group. Mu Dep. at 27, 35. The record is silent regarding where Plaintiff was standing, but there is enough to permit the inference that he was in the Omni driveway rather than out on the public street. Plaintiff described the group as "a bunch of kids," "about maybe 20 of them," whom he described as "coming in and out of the front door of the hotel lobby." Mu Dep. at 35. Plaintiff saw them confront a "black kid," who appeared to Plaintiff to be someone known to the others in the group; the "black kid" walked away and the group of twenty chased him out of sight around the corner towards a public parking lot. Mu Dep. at 36. Plaintiff heard a sound that he interpreted as "some type of fight." Mu Dep. at 36. Lebron heard what he later confirmed was the sound of smashing beer bottles resulting from a dropped case of beer; he followed the group around the corner to be sure no car had been damaged. Lebron Dec. ¶ 6. At this point, Plaintiff claims that he asked Lebron to get help, but Lebron refused and left to park a car.⁹ Mu Dep. at

⁸ Plaintiff disputes Lebron's averments that the group left and came back before he (Plaintiff) arrived. Since there is no dispute over the fact that the group was outside in front of the Omni when Plaintiff arrived, whether they left and returned or simply stayed is immaterial. Since Plaintiff has presented no evidence to contradict Lebron's statement that they left and returned, Lebron's version is included in this telling of the facts. At any rate, the factual dispute is not material to the pending motion.

⁹ In contrast to Plaintiff's version, Lebron swears that Plaintiff followed him "to check on him" when he left the Omni premises to survey the cars. Lebron Dec. ¶ 6-7. According to Lebron, from this off-the-Omni-premises vantage, Plaintiff verbally challenged the group, evoking an exchange of profanity; Lebron tried to stop Plaintiff's provocative behavior, to separate him from the group and to walk him towards the hotel lobby, as Plaintiff and the group continued to swear at and threaten each other. Lebron Dec. ¶ 8. Just as Lebron had maneuvered Plaintiff to the hotel lobby entrance, a woman drove up needing Lebron's assistance and he went to help her. Lebron Dec. ¶ 9; see Mu Dep. 36-37. Lebron did not see what followed. For purposes of this summary judgment motion, Plaintiff's version, not this one, which Plaintiff disputes, is accepted as true.

36-37. The group returned from the parking lot with cases of beer; Plaintiff believed that they were “like celebrating . . . like they just beat up some kid.”¹⁰ Mu Dep. at 36. The evidence regarding where the group was located when they returned from the parking lot with beer – that is, in the Omni’s driveway or on the public street – is muddled; the inference most favorable to Plaintiff requires the Court to assume for purposes of this motion that they were on the Omni’s premises, in its driveway.

Believing “they could be dangerous,” Plaintiff entered the lobby of the Omni and asked the Omni night manager, Elizabeth Kapel, to “kick them out of here or something because they’re fighting outside” and “you need to report these kids to the police.” Mu Dep. at 37, 60. Kapel states that he approached her at approximately 2:45 a.m. and asked her to call the police. Kapel Dec. ¶ 3; Mu Dep. at 37. As he approached her, between five and seven of the individuals comprising the group came “storming in” behind him. Mu. Dep. at 37, 41. Kapel tried to ask Plaintiff and the group of five to seven (Kapel recalls that it was four) to stop yelling obscenities at each other;¹¹ when this did not work, she “immediately” called the Providence Police and the two on-duty Omni security guards. Kapel Dec. ¶ 4. Omni records confirm that the call to hotel security was placed at 2:45 a.m. Duarte Dec. Exs. I, M. Both security guards aver that they responded “immediately.”¹² Attah Dec. ¶ 7; Pfefferle Dec. ¶ 7. While it is undisputed that

¹⁰ There is no evidence suggesting that anyone was actually “beaten up” or hurt or that any property was damaged by any members of the group until they attacked Plaintiff in the Omni lobby a few minutes later.

¹¹ Plaintiff disputes Kapel’s averment that he was yelling obscenities at the group. See Mu Dep. at 60 (“I didn’t say anything to them.”). For purposes of this analysis, I accept Plaintiff’s version.

¹² With no evidentiary basis for so doing, Plaintiff disputes that the two security guards responded to Ms. Kapel’s summons “immediately,” although he concedes that at least one arrived right after the attackers fled. Mu Dep. at 41.

Kapel tried to call the police, Omni records are ambiguous regarding whether Kapel was successful in connecting the 911 call to the police.¹³

In his deposition, Plaintiff confirmed that the attack came within “seconds” of his arrival in the hotel lobby. Mu Dep. at 37, 39. The members of the group who had followed Plaintiff into the lobby confronted him and pushed him down; one of them swung a small table at him, breaking his arm.¹⁴ Mu Dep. at 37, 39, 41. With Plaintiff on the ground and fearful of being caught, the group fled. Mu Dep. 41 (“I think they knew that if they stuck around any longer, that they’d probably get caught”). Almost immediately, according to Plaintiff’s version, one of the Omni’s security guards responded to the summons of the night manager and arrived in the lobby, followed by the doorman from Plaintiff’s condominium, but by then the miscreants had fled. Mu Dep. at 41. Both security guards aver that they arrived in the lobby, observed blood all over the floor, attended to Plaintiff’s potential injuries and determined that the blood was not his; Plaintiff denies that they offered him assistance. Compare Attah Dec. ¶¶ 7-8, and Pfefferle Dec. ¶¶ 7-8, with Mu Dep. at 42. Plaintiff estimates that he remained in the lobby for approximately five

¹³ Kapel avers that she called the Providence Police shortly after Plaintiff asked her to and at approximately the same time that she called Omni security, who received her call at 2:45 a.m. Kapel Dec. ¶ 4. It is undisputed that the Providence Police did not arrive until 3:25 a.m., forty minutes later and not until after Kapel placed a second call. Duarte Dec. Ex. I. The Omni’s phone log shows that two 911 calls were placed at 3:48 and 4:21 a.m., which (illogically) puts both calls well after the police actually arrived. See Duarte Dec. Ex. J. At the hearing, Omni proffered the explanation that its phone log was off by one hour, so that these calls were actually placed at 2:48 and 3:21 a.m., which creates a time line that is consistent with both Kapel’s declaration and the timing of the arrival of the police. Plaintiff disputes the proffer, arguing that a fact finder should be able to consider whether the 911 call was placed at 2:48 a.m. or 3:48 a.m. For purposes of this motion, I consider the timing of Ms. Kapel’s call to the police to be disputed.

¹⁴ At the end of his deposition, Plaintiff contradicted his earlier testimony that the entire incident was very brief, that he was attacked physically (“the kids were on you”) within seconds of his entry into the lobby and that the fight consisted of the attackers pushing him to the ground, hitting him with a table and fleeing when they saw him on the ground. Mu Dep. 39, 41. When reminded of his earlier testimony, Plaintiff changed his story, swearing that “the verbal confrontation lasted seconds. Like that was seconds. The fight lasted awhile.” Mu Dep. at 87. Where Plaintiff’s earlier testimony provided specific details in response to questions that probed his recollection of exactly what happened, and the sworn evidence of the other observer (Kapel) is consistent that the entire incident ended quickly, Kapel Dec. ¶ 5, the Court may ignore Plaintiff’s self-serving inconsistent statement. Reid v. Sears, Roebuck and Co., 790 F.2d 453, 460 (6th Cir. 1986) (party may not create a triable issue by contradicting his own prior testimony). Moreover, this dispute is not material.

minutes after the altercation ended and then, he claims at the suggestion of his own doorman or an Omni security guard, instead of waiting for the police, he returned to his apartment and went right to bed. Mu Dep. at 42-43. He did not respond to police efforts to reach him by phone after they arrived at the Omni at 3:25 a.m. Mu Dep. at 43; Duarte Dec. Ex. M (“[police] could not make contact with Mr. Mu to make a report”).

The next morning, Plaintiff tweeted out a provocative challenge to the “6 kids that tried to jump me Saturday,” threatening, “I’ll f*** you up.” Mu Dep. at 45. The same day, he sought medical attention and discovered that his arm had been broken when it came into contact with the small metal table. Mu Dep. at 57. This injury is the basis for his claim for damages. Two days later, at the urging of Omni’s head of security, he finally made a report to the police. Mu Dep. at 50-51, 58-59.

None of the individuals in the group of “five to seven” who were directly involved in the incident has ever been identified; nor has any identification been made of the individuals in the larger group who were ejected from Room 407.¹⁵ It is undisputed that the Omni’s surveillance cameras in the lobby were not working that night due to construction. Mu Dep. at 52. While the record is confusing, Plaintiff’s evidence permits the inference that whatever cameras the Omni may have had surveilling its premises were not adequate to record the incident. See n.15.

Plaintiff concedes that it is unlikely that better camera surveillance would have “prevented the fight.” Mu Dep. at 83. He speculates that “maybe if they saw the security cameras on what was

¹⁵ Plaintiff’s filings in connection with this motion make much of this fact – Plaintiff accuses Omni of covering up the incident by failing to track down the perpetrators. To support this claim, Plaintiff argues that an Omni incident report indicating that “[c]amera footage from DVR 1 from the times stated were inconclusive as to what exactly had occurred and was also not able to properly identify any individuals involved,” Duarte Dec. Ex. I, coupled with Omni’s discovery response that this video did not depict the incident, is evidence of spoliation. Plaintiff fails to explain that he and Omni both have the same evidence – the name and contact information for the woman registered for Room 407 – that could have been used to attempt to find out who the attackers were. Plaintiff did not present any evidence establishing that he used any of the powerful discovery tools available to him to attempt to do so. Because this dispute has no bearing on any facts material to this motion, I disregard it.

going on, they might have brought security down, so they might have saw a bunch of kids outside starting a fight with someone on the security camera and then investigated what was going on and then maybe this wouldn't have happened.” Mu Dep. at 83.

Despite being a five-year resident of the neighborhood, Plaintiff testified that he is aware of no fights or sudden attacks on Omni guests or invitees or of any crimes of any sort whatsoever, whether similar or not, in the Omni lobby, in the Omni driveway, in front of the hotel, on the Omni premises or in the general vicinity of the Omni, apart from his recollection that he once “heard” that a valet parking employee named Juan was punched by “some random guy” and that he “reported to the Omni.” Mu Dep. at 55-56. While admitting that he is “not in the hotel business, so I don't know,” he testified that the Omni should have had “adequate security,” that “if they were guests of the hotel, they should have kicked the guests out,” that there should have been radios to summon security to the lobby, and that they should have had cameras, including video cameras directed at the street and working video cameras in the lobby. Mu Dep. at 82-86. Apart from his own testimony, Plaintiff presented no evidence, and particularly no expert testimony, on patterns of criminal activity in the area or on the general topic of hotel security.

II. STANDARD OF REVIEW

Under Fed. R. Civ. P. 56, summary judgment is appropriate if the pleadings, the discovery, disclosure materials and any affidavits show that there is “no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” Taylor v. Am. Chemistry Council, 576 F.3d 16, 24 (1st Cir. 2009); Commercial Union Ins. Co. v. Pesante, 459 F.3d 34, 37 (1st Cir. 2006) (quoting Fed. R. Civ. P. 56(c)). A fact is material only if it possesses the capacity to sway the outcome of the litigation; a dispute is genuine if the evidence about the

fact is such that a reasonable jury could resolve the point in the favor of the non-moving party. Estrada v. Rhode Island, 594 F.3d 56, 62 (1st Cir. 2010); Santiago-Ramos v. Centennial P.R. Wireless Corp., 217 F.3d 46, 52 (1st Cir. 2000) (quoting Sánchez v. Alvarado, 101 F.3d 223, 227 (1st Cir. 1996)). The evidence must be in a form that permits the court to conclude that it will be admissible at trial. See Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986). In ruling on a motion for summary judgment, the court must examine the record evidence “in the light most favorable to, and drawing all reasonable inferences in favor of, the nonmoving party.” Feliciano de la Cruz v. El Conquistador Resort & Country Club, 218 F.3d 1, 5 (1st Cir. 2000) (citing Mulero-Rodriguez v. Ponte, Inc., 98 F.3d 670, 672 (1st Cir. 1996)). There are no trial-worthy issues unless there is competent evidence to enable a finding favorable to the nonmoving party. Goldman v. First Nat’l Bank of Bos., 985 F.2d 1113, 1116 (1st Cir. 1993).

III. ANALYSIS

For Plaintiff to state a claim for negligence, he must establish a legally cognizable duty owed by the Omni to him, a breach of that duty, proximate causation between the conduct and the resulting injury, and the actual loss or damage. Berard v. HCP, Inc., 64 A.3d 1215, 1218 (R.I. 2013) (citing Holley v. Argonaut Holdings, Inc., 968 A.2d 271, 274 (R.I. 2009)).

A. Legal Duty

The first element – the existence of a legal duty – is a question of law that the court alone is authorized to determine. Volpe v. Gallagher, 821 A.2d 699, 705 (R.I. 2003). As there is “[n]o clear cut formula” for determining the existence of a duty, the court will make the determination on a case-by-case basis. Id. Under Rhode Island law, there generally is no duty to control the conduct of a third party to prevent injury to another person unless “a defendant has a special relationship with either the person whose conduct needs to be controlled or with the intended

victim of the conduct.” Gushlaw v. Milner, 42 A.3d 1245, 1257 (R.I. 2012). If a “special relationship” exists, whether there is a legal duty encompasses “an *ad hoc* approach” requiring consideration of factors most recently articulated in Gushlaw: “(1) the foreseeability of harm to the plaintiff, (2) the degree of certainty that the plaintiff suffered an injury, (3) the closeness of connection between the defendant’s conduct and the injury suffered, (4) the policy of preventing future harm, and (5) the extent of the burden to the defendant and the consequences to the community for imposing a duty to exercise care with resulting liability for breach.” Id. at 1256-57 (quoting Ferreira v. Strack, 652 A.2d 965, 967-68 (R.I. 1995)); see Banks v. Bowen’s Landing Corp., 522 A.2d 1222, 1225 (R.I. 1987) (in considering whether a duty exists, court must consider “foreseeability of the harm to the plaintiff”). As so famously held in Chief Justice Cardozo’s seminal decision in Palsgraf v. Long Island Railroad Co., 248 N.Y. 339, 162 N.E. 99 (1928), “[t]he risk reasonably to be perceived defines the duty to be obeyed, and risk imports relation; it is risk to another or to others within the range of apprehension.” Id. at 344, 162 N.E. at 100 (quoted by Banks, 522 A.2d at 1226–27). In the absence of a legal duty, a plaintiff’s claim must fail as a matter of law. Ouch v. Khea, 963 A.2d 630, 633 (R.I. 2009).

In this case, the undisputed facts establish the existence of a special relationship based on Omni’s status as the “possessor of land that holds the land open to the public/member of the public”; and on Plaintiff’s status as a member of the public¹⁶ present on the public portions of the

¹⁶ Plaintiff’s attorneys somewhat disingenuously tried to portray Plaintiff as having been attacked while passing through the lobby at 2:30 in the morning to visit his parents, who were staying at the Omni. This representation of counsel is simply untrue – it is directly contradicted by Plaintiff’s testimony, in which he clearly states that his visit with his parents was earlier in the evening and plainly describes that he was waiting outside his apartment for a girlfriend so they could “hang out.” He retreated to the lobby when the group outside seemed to become dangerous; his presence in the lobby had nothing to do with his parents’ status as hotel guests. In any event, Plaintiff’s precise classification is no longer determinative of the degree of care owed by the owner under Rhode Island law. Banks, 522 A.2d at 1226. Since 1975, when Marioenzi v. Joseph DiPonte, Inc., 333 A.2d 127, 133 (R.I. 1975), gave “a final but fitting interment to the common-law categories of invitee, licensee, and trespasser,” the question to be resolved will be whether the owner used reasonable care for the safety of all persons reasonably expected to be upon

Omni's premises.¹⁷ See Gushlaw, 42 A.3d at 1258. By contrast, Plaintiff has failed to produce any competent evidence permitting the inference that the Omni had a relationship with any of the attackers sufficient to confer an ability to control their behavior "equivalent to the custodial degree required to find a special relationship." Id. At most, the evidence-based inferences favoring Plaintiff permit the conclusion that the alleged perpetrators were among the individuals who had been allowed by a hotel guest to stay in her room, who were the subject of complaints of noise and the smell of marijuana, and who had been evicted from the Omni when security discovered that none of them was a registered guest. There is no evidence that the Omni served any of them intoxicants or anything else; nor is there evidence that any of them were minors. There is no evidence suggesting that the Omni had any control over them. Thus, the duty analysis rests on whether, based on "the particular facts and circumstances" of this case, Omni had a legal duty to protect Plaintiff, a member of the public, from an attack spontaneously committed by third parties who followed him from the Omni's driveway area into its lobby. Id. at 1257. No duty arises based on a relationship with or control over the alleged perpetrators.

The first – and for this case most significant – Gushlaw factor is foreseeability. In examining the extent to which a sudden attack by a third party is sufficiently foreseeable as to give rise a duty to take precautions against it, the Rhode Island Supreme Court had cited with approval the guidance in Comment e of the Restatement (Second) of Torts S 314A (1999), which explains that one under a duty to protect others from unreasonable harm "is not required to take precautions against a sudden attack from a third person which he has no reason to anticipate."

the premises. See Banks at 1226 (wharf/restaurant owner owed no duty to foresee that drunk minor, who had been served drinks at restaurant, would dive off wharf and break his back).

¹⁷ It must be noted that a fact finder might conclude that the special relationship did not arise until Plaintiff entered the lobby because, as long as he was outside on the street, he was not within the Omni's premises. Drawing every inference in Plaintiff's favor, for purposes of this motion, I assume that the special relationship persisted throughout the incident because Plaintiff was on the Omni's premises from the moment he came down from his apartment to wait for his girlfriend.

Martin v. Marciano, 871 A.2d 911, 917 (R.I. 2005). While acknowledging that there is no clear-cut formula to determine whether a duty exists in a specific case, Kenney Mfg. Co. v. Starkweather & Shepley, Inc., 643 A.2d 203, 206 (R.I. 1994), Rhode Island has time and again demonstrated reluctance to expand the boundaries of liability imposed on a business or premises owner to protect invitees from the criminal acts of third parties. Ferreira v. Strack, 636 A.2d 682 (R.I. 1994); see Konar v. PFL Life Ins. Co., 840 A.2d 1115, 1119-21 (R.I. 2004) (narrow construction of complaint as failing to allege premises liability permits affirmance of dismissal of allegations that mall owner failed to provide security that would have prevented beating of plaintiff by dangerous assailant).

Consistent with this reluctance, whether determining the duty of a landowner, homeowner, landlord or car operator, Rhode Island cases uniformly reject the proposition that a defendant has a duty to protect persons on or near the subject premises from harm caused by the dangerous or spontaneous criminal acts of an unrelated third party in the absence of strong and direct evidence of foreseeability. See Ouch, 963 A.2d at 633 (driver who started car near area occupied by rival gang could not foresee murderous conduct of gunman and did not owe duty of care to passengers to protect them from gunfight); Thanadabouth v. Kongmany, 712 A.2d 879, 880 (R.I. 1998) (with no evidence of prior criminal activity on the premises prior to robbery/shooting, landlord owed no duty to tenant to provide additional exterior lighting to prevent crimes by third persons); Ferreira, 636 A.2d at 685-86 (church owed no duty to protect worshippers hit by drunk driver while crossing busy street to enter church from church parking lot; foreseeability insufficient because church had no control over perpetrator or public traffic); Banks, 522 A.2d at 1225 (because wharf owner could not have foreseen that plaintiff would dive off wharf while intoxicated, it owed him no duty to enhance security).

In those rare instances where the Rhode Island Supreme Court has found that a legal duty existed to protect against spontaneous crime, the duty was based on the defendant's control over and direct knowledge of the perpetrator, which made the potential for violence foreseeable. See Volpe, 821 A.2d at 702-03 (home owner whose severely mentally ill son kept weapons arsenal in basement, which he used to shoot and kill neighbor, owed duty based on foreseeability of tragedy in light of her ability to control her son's hoarding of dangerous weapons). More recently, in Martin v. Marciano, Rhode Island held that a parent/host who irresponsibly serves alcohol to a large gathering of party guests known to be underage owes those guests a duty based on the foreseeability "that a melee could break out" resulting in a spontaneous criminal act because minors "by virtue of their tender age and inexperience, are presumed less capable of handling the deleterious effects of alcohol consumption." 871 A.2d at 916-17. In the same context, Massachusetts has acknowledged the existence of a duty based on the foreseeability that an already drunk high school-age male, served more alcohol by the host of a party to which mostly high school-age guests had been invited, would sucker punch a guest who criticized his crude behavior. Pollard v. Powers, 738 N.E. 2d 1144, 1146-47 (Mass. App. Ct. 2000). In Martin, the Rhode Supreme Court expressly limited the holding to "the context of this case." 871 A.2d at 920.

Despite this rich body of case law laying out Rhode Island's approach to the duty determination when the alleged negligence is the failure to prevent a crime or catastrophe caused by the conduct of a third party, Rhode Island has yet squarely to address the precise issue of what must be foreseeable to impose a duty on a business owner like Omni to protect the public from third-party criminal activity occurring on the public portions of its premises.¹⁸ See Konar, 840 at

¹⁸ Although Rhode Island has not spoken in the precise factual setting presented here, its law on how to determine the existence of a duty is well developed, clear and consistent with the law in other states that have addressed the

1123 (“The legal question posed by this case is whether a landowner’s duty to use reasonable care to protect business invitees encompasses a duty under certain circumstances, to provide protection against or security from the intentional criminal acts of third persons that occur on the premises. To date, this Court has not addressed that precise issue.”). Thus, Rhode Island has not yet deployed its duty analysis in the specific factual context of a crime committed against a member of the public in the hotel’s public areas, and has never considered whether a hotel has a duty to protect members of the public who enter its lobby from the spontaneous crime of a third party. However, many courts in other states have done so; examination of these cases reveals that they apply the negligence principles endorsed by Rhode Island in consistently declining to find a duty except where the evidence of foreseeability is not only strong but also clearly linked to the crime at issue in the case. See Lisi v. Several Attorneys, 596 A.2d 313, 324 (R.I. 1991) (review of cases from other jurisdictions appropriate in case of first impression).

For example, echoing Rhode Island’s holding in Thanadabout, 712 A.2d at 879 (no duty because “no prior criminal activity on the premises”), in Jai Jalaram Lodging Grp., L.L.C. v. Leribeus, 225 S.W.3d 238, 242 (Tex. Ct. App. 2006), the Texas court found the hotel had no duty because there was no evidence of prior or similar criminal activity to establish that the crime was foreseeable, in a case where a guest was hit with a baseball bat, kidnapped and robbed. Id. at 246 (noting absence of “evidence that other crimes have occurred on the property or in its immediate vicinity . . . sufficiently similar to the crime in question as to place the

question in analogous factual circumstances. Therefore, this is not a case appropriate for certification to the Rhode Island Supreme Court pursuant to its Rule 6(a), which permits certification in cases with “no controlling precedent.” Art. I, Rule 6 Supreme Court Rules of App. Proc. Unlike Western Reserve Life Assur. Co. v. ADM Assocs., 737 F.3d 135 (1st Cir. 2013), in which the First Circuit certified a central question of law to the Rhode Island Supreme Court for guidance, this case does not involve statutory complexities, nor has the Rhode Island Supreme Court left the issue of premises liability “largely unaddressed,” id. at 143, or sent “mixed messages” as to its interpretation. Id. at 142; see also Banks v. Hyatt Corp., 722 F.2d 214, 216 (5th Cir. 1984) (despite lack of precedent involving crimes committed at hotels, state court denied certification of questions regarding scope of duty in connection with murder at hotel entrance because “once the relevant facts are determined, the case can be decided on existing, established principles of Louisiana law”).

landowner on notice of the specific danger”); see Beckwith v. Interstate Mgmt. Co., LLC, 82 F. Supp. 3d 255, 262 (D.D.C. 2015) (evidence of prior crimes insufficient to establish foreseeability of sexual assault in hotel lobby restroom without proof that perpetrator was an intruder committing a crime similar to neighborhood pattern of crimes; summary judgment granted based on lack of duty to prevent assault); Gordon v. Starwood Hotels & Resorts Worldwide, Inc., 821 F. Supp. 2d 1308, 1311, 1314 (N.D. Ga. 2011) (hotel owed no duty to guest in driveway who was attacked without warning, despite failure of valet to summon security in the moment before attacker delivered blow that rendered guest unconscious; with no evidence of prior criminal acts on premises or in close proximity, spontaneous act of violence in hotel’s public area not foreseeable); Brake v. Comfort Inn, No. 2002-A-0006, 2002 WL 31866170, at *3 (Ohio Ct. App. Dec. 20, 2002) (no duty despite testimony from bartender who was uncomfortable with hotel’s lack of a security guard and expert who said hotels should anticipate that people who drink may become involved in confrontations; criminal conduct not reasonably foreseeable in light of standard that “somewhat overwhelming circumstances are required to establish the foreseeability”); Morris v. Motel 6 Operating, L.P., No. E029523, 2002 WL 539030, at *4 (Cal. Ct. App. Apr. 12, 2002) (foreseeability rarely can be proven without proof of prior similar incidents of violent crime on premises); Rednour v. Hilton Hotels Corp., 724 N.Y.S.2d 739, 740 (N.Y. App. Div. 2001) (attack on homeless man in public hallway of hotel was targeted specifically at him; because hotel had no reason to anticipate attack, it was not foreseeable and hotel owed him no duty); Van Blargan v. Williams Hospitality Corp., 759 F. Supp. 940, 943 (D.P.R. 1991) (“When individuals become involved in a sudden altercation in a hotel lobby, there are no precautions which the hotel management might take. Such public area attacks are unavoidable.”); Rosensteil v. Lisdas, 456 P.2d 61, 63 (Or. 1969) (despite evidence that

perpetrators were known by restaurant owner to have violent and disorderly propensities, on day of incident, they gave no warning that “they would stir up trouble and suddenly return to burst into the restaurant” so that stabbing was not foreseeable).

As Judge Posner colorfully expressed the proposition in Shadday v. Omni Hotels Management Corp., there is no duty when the “assault on the plaintiff was as unexpected as the attack on the guest at another hotel by a rabid mongoose.” 477 F.3d 511, 516 (7th Cir. 2007) (citing Wood-Leber v. Hyatt Hotels of P.R., Inc., 124 F.3d 47, 51 (1st Cir. 1997)).

The instances where a hotel has been found to have a duty to protect its guests or the public from third party crime are also instructive. For example, in Fund v. Hotel Lenox of Boston, Inc., 635 N.E.2d 1189 (Mass. 1994), a hotel in high crime area was aware of “many incidents” of criminals using the hotel’s unprotected fire escape to enter guest rooms to commit crimes; based on this evidence of foreseeability, the court found that the hotel owed a duty to female guest who was murdered after the hotel placed her in a room that was close to fire escape. Id. at 1190-91. Similarly, in Virginia D. v. Madesco Investment Corp., the court found the existence of a duty owed to a hotel patron who was assaulted in the hotel’s public restroom based on “substantial evidence that persons having no proper business in the hotel and not scrupulous about respect for law and property entered with some regularity and were a cause of concern to the hotel authorities.” 648 S.W.2d 881, 884-85 (Mo. 1983); see also Sawyer v. Wight, 196 F. Supp. 2d 220, 227 (E.D.N.Y. 2002) (hotel’s prior experiences with violence of wrestling fans who gather after wrestling events rendered violent incident in lobby sufficiently foreseeable to impose duty); Days Inns of Am., Inc. v. Matt, 454 S.E.2d 507, 508 (Ga. 1995) (proof of prior robbery committed by force creates triable issue as to hotel’s duty to guard patrons against risks posed by similar criminal activity); Landry v. St. Charles Inn, Inc., 446 So. 2d 1246, 1249 (La.

Ct. App. 1984) (evidence of “no less than seven robberies or assaults to have occurred in the immediate area during the year preceding this incident” sufficient to impose duty). In all of these cases, the foreseeability evidence was substantial and directly related to the incident in issue.

Applying these legal principles to Plaintiff’s version of what happened, both from the perspective of Omni’s duty to protect patrons in the lobby from foreseeable crime and from the perspective of whether this specific crime was foreseeable, I hold that no duty exists in this case.

When the facts are examined from the perspective of the duty to adopt security measures based on what crimes are foreseeable in light of past crime patterns, the analysis is easy. Plaintiff has presented no competent evidence of any prior criminal activity in or near the Omni. His testimony about a vague rumor that a valet was punched once amounts to nothing – it is rank hearsay and not appropriate for consideration at summary judgment. Levine v. Smithtown Cent. Sch. Dist., 565 F. Supp. 2d 407, 420 (E.D.N.Y. 2008) (“hearsay assertions that would not be admissible at trial . . . insufficient to create a genuine issue for trial”); see F.R.C.P. Rule 56(e). Moreover, even if Plaintiff had presented a suggestion of a pattern of crime, he would still face the burden of linking the known pattern to the incident. See Shadday, 477 F.3d at 514 (known risk of criminal intruders is immaterial when rape was committed by guest, not by intruder); Thanadabouth, 712 A.2d at 880 (breach of duty to illuminate to protect tenant from falling does not create liability for criminal attack where purpose of lights was not to prevent crime). Plaintiff’s status as a neighbor who had lived next door for five years and had the same knowledge as Omni regarding the crime patterns in his neighborhood further undermines the existence of a legal duty. Shadday, 477 F.3d at 514 (in protecting against the risk of third party crime, if hotel owes duty, it would be to out-of-town guests who do not know the area, and not to

one who “not being transient, is likely to have more information than a hotel guest about the risk of crime and a greater ability to protect himself from it”); Gordon, 821 F. Supp. 2d 1308 (owner of premises has no duty to protect invitee from foreseeable injuries resulting from criminal acts of third party unless owner had knowledge of danger superior to that of invitee).

Equally unavailing for Plaintiff is a shift of the Court’s focus to whether the foreseeability of this crime was such as to give rise to a duty as the events unfolded. At best for Plaintiff, the evidence establishes that Omni knew that a loud and rowdy group of young men, who may have been using marijuana, was outside its lobby, on or near its premises. Attributing the knowledge of the valet (Lebron) to Omni, it was aware that these “kids” had been fighting among themselves, including chasing a “black kid,” who, as Plaintiff testified, appeared to be with them, as well as that they returned from that encounter carrying beer. However, throughout the time that Omni was aware of this group, the group committed no crimes¹⁹ or acts of violence resulting in personal injury. To the contrary, when Omni’s security guards evicted them from Room 407, the uncontroverted declarations of the security guards establish that they were polite, compliant and apologetic. Similarly, while the Omni parking valet watched them punching and chasing each other, they did not interfere with him or any of the Omni guests he was serving. See Rosensteel, 456 P.2d at 63 (even if perpetrators were known to have violent propensities, not foreseeable that they would burst into the restaurant and stab patron). And at the time Plaintiff claims he asked the valet to call for help in getting the group to leave, his testimony establishes that he was focused on the safety of the “black kid” he thought they were chasing; there was still no evidence suggesting that they would spontaneously return and attack him, never mind anything beyond speculation that such a call for help would have prevented the attack that

¹⁹ Possession and use of small amounts of marijuana is not a crime under the law of Rhode Island. R.I. Gen. Laws § 21-28-4.01.

followed. See Gordon, 821 F. Supp. 2d at 1311, 1314 (no duty to guest attacked in driveway without warning, despite failure of valet to respond to request that he summon security). While Plaintiff claims he heard sounds that caused him to believe they gave a beating to the young man he saw them chasing, no evidence to that effect has been presented nor is there any suggestion that any Omni employee or representation made the same observation. Thus, there is no evidence establishing that a spontaneous physical attack on Plaintiff was foreseeable until the moment when the night manager was approached by Plaintiff in the lobby with the perpetrators in pursuit, “seconds” before they attacked.

With nothing to make it foreseeable either that random ruffians or the specific rowdy group evicted from Room 407 would spontaneously attack Plaintiff in the Omni’s lobby, consideration of the first Gushlaw factor compels the conclusion that the Omni had no legal duty to anticipate such an event and to adopt security measures to prevent it.

This conclusion is reinforced when the Court considers the remaining Gushlaw factors. Thus, until the split second before the group became violent, at which point Omni’s security measures effectively limited the scope of the harm, there was no “certainty that the plaintiff [would] suffer[] an injury.” Gushlaw, 42 A.3d at 1256-57. Nor does any evidence establish a “close connection” between Plaintiff’s injury and the Omni’s conduct earlier in the evening in evicting the rowdy group. Id. at 1262 (“lack of temporal closeness of events, certainly strains any close connection”). Also unhelpful to Plaintiff are the conclusions drawn from consideration of the policy-based Gushlaw factors. At the foundation of this analysis is the proposition that the protection of the public is a duty allocated to the government. Ferreira, 636 A.2d at 685-86; see Rosensteil, 456 P.2d at 63 (“we do not think that it should be duty of a businessman . . . to risk his own life or employ others to risk theirs in order to protect bystanders who happen to be in the

restaurant rather than on the street”). Relatedly, in Gushlaw itself, the Rhode Island Supreme Court reemphasized its conservative approach of deferring to the legislature before imposing a duty where one has not previously been imposed – “[g]iven the palpable issues in defining the scope and extent of such a duty, . . . we exercise judicial restraint and decline to impose such a duty on this occasion.” Id. at 1264.

Ultimately, this Court’s difficulty in envisioning the extent of the burden that would be imposed on Rhode Island hotels if a duty were imposed here is the most significant reason why the policy considerations tip against the imposition of a duty. Banks, 522 A.2d at 1226-27 (burden that would result if premises owners had duty to prevent people diving into shallow water supports finding of no duty). For example, would a duty in this case require a hotel to be prepared to send a phalanx of security employees into the street, potentially resulting in a brawl to the obvious detriment of community safety? And is it appropriate for the federal court to impose such a duty? Given the “palpable issues” in defining the scope and extent of what the duty would be, it is clear that public policy concerns do not tip in favor of finding that a duty exists in this case. See Gushlaw, 42 A.3d at 1264.

Based on the foregoing consideration of the Gushlaw factors in the facts and circumstances of this case, the Court holds that Plaintiff has failed as a matter of law to establish that Omni owed him any legal duty to protect him from the criminal conduct of third parties.

B. Standard of Care

The second and equally fatal deficit in Plaintiff’s proof is the lack of evidence to establish the applicable standard of care. Under Rhode Island law, a viable negligence claim requires a finding of a standard of care, the breach of which caused the harm. See Morales v. Town of Johnston, 895 A.2d 721, 732 (R.I. 2006). Translated to the facts of this case, Plaintiff must

present evidence of the standard of care to be expected of a hotel that is open to the public, for protecting invitees in the public areas of its premises against an unreasonable risk of physical harm from third parties.

Omni argues that the insufficiency of Plaintiff's proof is established by his failure to present expert testimony based on the Rhode Island Supreme Court's "require[ment of] 'expert testimony . . . to establish deviation from the standard of care when the lack of care is not so evident as to be obvious to a lay person.'" Foley v. St. Joseph Health Servs. of R.I., 899 A.2d 1271, 1277 (R.I. 2006) (quoting Boccasile v. Cajun Music Ltd., 694 A.2d 686, 690 (R.I. 1997)). "The question whether expert testimony is necessary in [a] case presents a question of law." Sanders v. Fireline, Inc., 295 F. App'x 373, 374 (2d Cir. 2008); Carlson v. Tactical Energetic Entry Sys., LLC, No. 14-CV-248-WMC, 2015 WL 3935805, at *5 (W.D. Wis. June 26, 2015). Omni relies on the many cases holding that the standard of care pertaining to hotel security "is not so evident as to be obvious to a lay person" and requires expert testimony. Lees v. Carthage Coll., 714 F.3d 516, 522 (7th Cir. 2013) ("Premises-security cases like this one fall within the category of negligence claims requiring expert testimony."); Shadday, 477 F.3d at 515 (summary judgment in favor of hotel based on lack of expert testimony of standard of care); Varner v. D.C., 891 A.2d 260, 267 (D.C. 2006) ("[E]xpert testimony is required to establish the standard of care in negligence cases such as this one, which involve issues of safety, security and crime prevention.").

While Omni is right that the standard of care to be imposed on a hotel to protect against generic crime arising in its neighborhood likely requires an expert, depending on the facts, there is also no question that a premises-liability plaintiff could establish a standard of care based on lay testimony, if the breach was a matter of common sense. I decline to hold that Rhode Island

would treat premises-liability cases as it does professional malpractice cases, for which expert testimony is always required to establish the standard of care. Gianquitti v. Atwood Med. Associates, Ltd., 973 A.2d 580, 594-95 (R.I. 2009) (citing Foley, 899 A.2d at 1278 (expert testimony required in medical malpractice action), and Boccasile, 694 A.2d at 689-90 (expert testimony required in case pertaining to professional skill and judgment of nurse)).

Nevertheless, Plaintiff's standard of care proffer is still deficient as a matter of law. His only evidence is his own testimony regarding what he thinks the Omni should have done. Apart from his admitted incompetence on the topic, Mu Dep. at 85, his testimony is insufficient because his suggested fixes are all either measures that the Omni did have in place (having security guards on the premises, having adequate communication to summon the security guards, calling the security guards when the situation became violent) or are precautions that he concedes would not have prevented his injury (working surveillance cameras). See Shadday, 477 F.3d at 516 (because rape completed long before guard alerted by camera could have intervened, lack of security camera not deviation from applicable standard of care). More importantly, his standard of care testimony is legally insufficient because it is based on nothing more than his own speculation. Gordon, 821 F. Supp. 2d at 1315 (standard of care not established by mere speculation that, with "properly working security cameras and a reasonable number of security guards working in the motor lobby on the night in question, Plaintiff's attackers would have been deterred").

Based on the foregoing, the Court finds that Plaintiff has failed as a matter of law to present evidence sufficient to establish the applicable standard of care.

C. Causation

“In order to establish causation, a plaintiff must show that the defendant’s breach of duty was the actual and legal cause of the plaintiff’s harm.” Hall v. Eklof Marine Corp., 339 F. Supp. 2d 369, 376-77 (D.R.I. 2004); Almonte v. Kurl, 46 A.3d 1, 18 (R.I. 2012). To prove legal or proximate cause, “a plaintiff must demonstrate that the injury claimed was a direct or foreseeable result of the defendant’s negligence. Under Rhode Island law, this requirement is satisfied if the injury is a ‘natural and probable’ consequence of the negligent act.” Doe v. United States, 737 F. Supp. 155, 161 (D.R.I. 1990); Hueston v. Narragansett Tennis Club, 502 A.2d 827, 830 (R.I. 1986).

In this case, with no legal duty and no competent evidence of the standard of care, only a brief discussion of Plaintiff’s failure to present evidence of causation is necessary; an independent focus on causation amounts to little more than a fugue replaying the duty/standard of care analysis in a different key. What matters is that Plaintiff has failed to demonstrate that his injury was the “natural and probable” consequence of any specific act of alleged negligence. As expressed in Shadday, in which the court concluded that the evidence failed to establish any causal connection between the alleged lack of cameras and insufficiency of security guards and the rape of a hotel guest in the elevator:

[A] hotel could hardly be required to have security guards watching every inch of the lobby every second of the day and night. A security camera trained on the bank of elevators would have been ineffective to prevent the rape. The video of the struggle outside the elevators might not have revealed its involuntary character, and anyway by the time a security guard had been alerted by the video and reached the bank of elevators, the plaintiff and her assailant would have been inside the elevator. Had there been a security camera there, the rape would have been completed long before a guard, alerted by what the camera showed, would have arrived on the scene, though a video recording of the rape might have assisted in the prosecution of the rapist or in any civil action brought by the victim against him.

477 F.3d at 517. Similarly, in Gordon v. Starwood Hotels, in addition to finding no duty and no evidence of any violation of a specific standard of care, the court also held that the “[p]laintiff has not provided any evidence demonstrating a causal link between the security measures taken or not taken by the Hotel and the injuries sustained by [the p]laintiff to support his claim of [the d]efendant’s negligence.” 821 F. Supp. 2d at 1316; see Alqasim v. Capitol City Hotel Inv’rs, 989 So. 2d 488, 493 (Miss. Ct. App. 2008) (assertions that hotel knew of atmosphere of violence yet had no surveillance cameras in place or additional trained officers insufficient to show that, if security were somehow different, attack in hotel parking lot would not have occurred). Here, with an incident that spontaneously erupted in “seconds,” Plaintiff has not shown that working security cameras or an increase in the number of security guards or any of the other suggestions he made in his deposition would have prevented his injuries. Therefore, he cannot show that the Omni’s failure to adhere to some applicable standard of care was the proximate cause of his injury.

IV. CONCLUSION

Based on the foregoing, Defendant Omni Hotels Management Corporation’s Motion for Summary Judgment (ECF No. 17) is GRANTED. Pursuant to F.R.C.P. Rule 56(f), the Court also intends to grant summary judgment within thirty days of the date of this Order, in favor of the John Doe Defendants who have not yet been identified or served as required by F.R.C.P. Rule 4(m), unless Plaintiff can show good cause why such an order should not be entered.

So ordered.

/s/ Patricia A. Sullivan
PATRICIA A. SULLIVAN
United States Magistrate Judge
September 19, 2016