

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND**

**NORMAN LAURENCE, JR.**

v.

**C.A. NO. 08-109 ML**

**A.T. WALL, ET AL.**

**REPORT AND RECOMMENDATION**

Jacob Hagopian, Senior United States Magistrate Judge

Plaintiff, Norman Laurence, Jr. (“Plaintiff”), *pro se*, an inmate at the Adult Correctional Institutions (the “ACI”) in Cranston, Rhode Island, filed a complaint (the “Complaint” or “Cmpt.”) in the instant action under 42 U.S.C. §§ 1983 & 1985 (“§ 1983” & “§ 1985”, respectively)(Docket # 1). Plaintiff alleges that 65 defendants (ACI wardens, supervisors, correctional officers, and legal and medical personnel as well as state police officers and prosecutors) violated his civil rights.

Presently before the Court are Motions for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure (the “Federal Rules”) filed by two defendants: (i) Eric Croce, a state police officer, (Docket # 157) and (ii) Cindy Soccio, a state prosecutor, (together with Croce, the “Two Defendants”) (Docket # 159). Plaintiff objected to these motions (the “Objection” or “Obj.”) (Docket # 168). These matters have been referred to me pursuant to 28 U.S.C. § 636(b)(1)(B) for a report and recommendation. For the reasons set forth below, I recommend that the Two Defendants’ instant motions be GRANTED.

**BACKGROUND**

In the Complaint, Plaintiff alleges that various defendants have subjected him to electronic surveillance via cameras concealed in the light fixtures in his cells. Plaintiff claims that such defendants use the surveillance devices to watch him perform bodily functions and engage in legal work, and then taunt and harass him with the information they obtain. Plaintiff further alleges that various defendants have (i) impeded Plaintiff’s access to the courts by denying him legal materials and copies, spying on his legal work, and interfering with his legal mail; (ii) passed around a court-ordered psychiatric evaluation of Plaintiff and harassed Plaintiff with the contents thereof; and (iii) prevented Plaintiff from receiving adequate mental health care.

The allegations in the Complaint mention defendant Croce only once and defendant Soccio only four times. Specifically, the Complaint alleges that (i) Croce, Soccio, and others used the ACI High Security Center to videotape and laugh at Plaintiff every day, Cmpt. ¶ 72; (ii) Soccio (and all defendants) conspired to use electronic surveillance to deny Plaintiff access to courts (by responding under oath in previous lawsuits that the surveillance devices and the psychiatric evaluation did not exist and by threatening to expose the tapes of Plaintiff if Plaintiff did not discontinue his legal action), Cmpt. at p. 2 & ¶ 71 (regarding all defendants) & ¶ 73 (regarding Soccio and all defendants); and (iii) Soccio and others interfered with Plaintiff's outgoing mail to the courts, Cmpt. at ¶ 81. The Complaint also alleges that Plaintiff wrote Soccio a letter disrespecting Correctional Officer Duarte. Cmpt. at ¶ 76. Additionally, the Complaint alleges that all defendants released and passed around the court-ordered psychiatric evaluation of Plaintiff to investigate, harass, and blackmail Plaintiff. Cmpt. at ¶ 70.

## DISCUSSION

### I. Summary Judgment Standard

Summary judgment's role in civil litigation is "to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial." *Garside v. Osco Drug, Inc.*, 895 F.2d 46, 50 (1<sup>st</sup> Cir. 1990) (citation omitted). Summary judgment can only be granted when "the pleadings, the discovery and disclosure materials on file, 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." Fed.R.Civ.P. 56(c). "A 'genuine' issue is one that could be resolved in favor of either party, and a 'material fact' is one that has the potential of affecting the outcome of the case." *Calero-Cerezo v. United States Dept. of Justice*, 355 F.3d 6, 19 (1<sup>st</sup> Cir. 2004)(quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-50, 106 S.Ct. 2505 (1986)). In considering a motion for summary judgment, the Court reviews all evidence in the light most favorable to the nonmoving party and draws all reasonable inferences in favor of the nonmoving party. *Cadle Co. v. Hayes*, 116 F.3d 957, 959 (1<sup>st</sup> Cir. 1997).

Summary judgment involves shifting burdens between the moving and the nonmoving parties. Initially, the moving party is required to aver "an absence of evidence to support the nonmoving party's case." *Garside*, 895 F.2d at 48 (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548 (1986)). After such a showing has been made, the burden shifts to the nonmovant to demonstrate, by presenting specific facts, that a trialworthy issue remains. *Cadle Co.*, 116 F.3d at 960. The nonmoving party "may not rest upon mere allegation ... but must set

forth specific facts showing that there is a genuine issue for trial.’’ *Braga v. Hodgson*, 605 F.3d 58, 60 (1<sup>st</sup> Cir. 2010) (quoting *Anderson*, 477 U.S. at 256).

## **II. No Genuine Issue As To Any Material Fact Demonstrating That Defendants Violated Plaintiff’s Rights**

Here, Plaintiff asserts claims pursuant to § 1983 that defendants Croce and Soccio violated his rights under the First, Fourth, Eighth, and Fourteenth Amendments as well as state law. He alleges the Two Defendants (i) invaded his privacy via electronic surveillance of Plaintiff and disclosure of his psychiatric evaluation; (ii) impeded his access to courts by viewing his legal work via electronic surveillance, denying the existence of surveillance devices and the psychiatric evaluation under oath in previous litigation involving Plaintiff, and attempting to coerce Plaintiff to discontinue his litigation; and (iii) subjected Plaintiff to cruel and unusual punishment by harassing him with information garnered from the electronic surveillance and psychiatric evaluation. Additionally, Plaintiff alleges that Soccio denied him access to courts by interfering with his legal mail. Plaintiff also alleges that the Two Defendants conspired with other defendants to deny Plaintiff access to courts in violation of § 1985.

### **A. Claims Under § 1983**

To succeed on a claim under § 1983, the plaintiff must demonstrate that the conduct complained of (i) was committed by a person acting under color of state law and (ii) deprived the plaintiff of a constitutional or federal statutory right. *Gomez v. Toledo*, 446 U.S. 635, 640, 100 S.Ct. 1920 (1980). Here, the issue is whether the Two Defendants deprived Plaintiff of any constitutional right.

The Two Defendants, in their Motions for Summary Judgment, aver that Plaintiff has failed to demonstrate any evidence to support his case. In the Statements of Undisputed Facts, and the affidavits they submit in support thereof, the Two Defendants state, *inter alia*, that they have no knowledge or information regarding (i) cameras in Plaintiff’s light fixtures or in his cells at the ACI or (ii) the circulation at the ACI of any written psychiatric evaluation concerning Laurence. Croce’s Statement of Undisputed Facts (Docket # 158), ¶¶ 9 & 10; Soccio’s Statement of Undisputed Facts (Docket # 160), ¶¶ 6 & 7. Further, Soccio states that she has never been to the High Security Center at the ACI and has no knowledge about any alleged harassment by ACI personnel against Plaintiff. Soccio’s Statement of Undisputed Facts, ¶ 8.

These statements support the Two Defendants’ contentions that they did not violate Plaintiff’s constitutional rights as Plaintiff claims. First, if the Two Defendants had no

knowledge of the alleged electronic surveillance and circulation of the psychiatric report, they could not have (i) invaded Plaintiff's privacy, (ii) denied Plaintiff access to courts by using electronic surveillance to view Plaintiff's legal work or threatening to expose tapes of Plaintiff if he continued his lawsuit, or (iii) imposed cruel and unusual punishment on Plaintiff by harassing him about the surveillance and psychiatric evaluation. Additionally, Soccio's statement that she has never been to the ACI and has no knowledge of harassment by ACI personnel against Plaintiff indicates that she could not have interfered with Plaintiff's legal mail. Accordingly, the Two Defendants have shifted the burden to Plaintiff to demonstrate a material dispute regarding these issues.

Plaintiff, however, has not met this burden. First, Plaintiff has not submitted a Statement of Disputed Facts in response to the motions by Croce and Soccio, as required by District of Rhode Island Local Rule 56(a)(3). LR Cv. 56(a)(3). Therefore, the facts set forth in the Two Defendants' Statements of Undisputed Facts are taken as true. *Id.* ("For purposes of a motion for summary judgment, any fact alleged in the movant's Statement of Undisputed Facts shall be deemed admitted unless expressly denied or otherwise controverted by a party objecting to the motion."); *see also Ayala-Gerena v. Bristol Myers-Squibb Co.*, 95 F.3d 86, 95 (1<sup>st</sup> Cir. 1996); *Horn v. S. Union Co.*, C.A. No. 04-434S, 2008 WL 2466696, at \* 2 (D.R.I. June 18, 2008).

Further, even if the Court were to look at the evidence submitted by Plaintiff in opposition to the Motions for Summary Judgment, Plaintiff has not presented any admissible evidence indicating that a trialworthy issue remains. Instead, Plaintiff submits a personal affidavit replete with statements about what Plaintiff heard others say about the existence of cameras (to prove the existence of cameras in his cell) as well as allegations, many from the Complaint, that ACI staff were talking about things Plaintiff did or wrote in his cell or that he told the psychiatrist in connection with the court-ordered psychiatric evaluation (trying to imply generally that there must be surveillance in his cell and his psychiatric evaluation must have been circulated). *See* Affidavit of Plaintiff (Docket # 169). However, the former evidence is inadmissible hearsay that cannot be used to oppose a summary judgment motion. *See Garside*, 895 F.2d at 50 ("Hearsay evidence, inadmissible at trial, cannot be considered on a motion for summary judgment"). The latter evidence, which consists of conclusory allegations and improbable inferences that do not indicate that either of the Two Defendants were involved with the alleged surveillance cameras in Plaintiff's cell or circulation of his psychiatric evaluation or that Soccio interfered with Plaintiff's legal mail, also fails to support Plaintiff's position. *See*

*Femino v. NFA Corp.*, Nos. 06-143 & 06-513, 2007 WL 1893719, at \* 3 (D.R.I. June 29, 2007) (“summary judgment may be appropriate if the nonmoving party rests merely upon conclusory allegations, improbable inferences, [or] unsupported speculation”)(quotation omitted). Therefore, Plaintiff’s evidence fails to raise a genuine issue as to any material fact demonstrating that either of the Two Defendants violated Plaintiff’s rights.

Accordingly, I find that the Two Defendants are entitled to judgment as a matter of law with respect to the § 1983 claims in the Complaint and recommend the Two Defendants’ Motions for Summary Judgment be granted with respect to such claims.

**B. Claims Under § 1985**

Plaintiff also asserts jurisdiction in this case under §§ 1985(2) and (3), regarding conspiracies to interfere with civil rights. Section 1985(2) creates a private right of action for damages based on conspiracies to interfere with judicial proceedings while § 1985(3) confers a private cause of action for injuries occasioned by conspiracies to deprive any person or class of persons of the equal protection of the laws. 42 U.S.C. §§ 1985(2) & (3).

Here, the Complaint alleges that, presumably in connection with prior litigation involving Plaintiff, all defendants conspired with a RIDOC attorney to deny under oath the existence of surveillance devices and the psychiatric evaluation in order to conceal defendants’ abuse of Plaintiff with such items. Cmpt. at p. 2, ¶ 71 & ¶ 73. However, as described in the Report and Recommendation issued on April 2, 2009 (Docket # 81), Plaintiff’s allegations fail to state claims under either §§ 1985(2) or (3), and here Plaintiff has not submitted evidence supporting such claims. First, Plaintiff has not submitted evidence showing, or even alleged, that the Two Defendants: (i) deterred a party or witness from attending or testifying in federal court; (ii) injured the person or property of a party or witness attending or testifying at a federal judicial proceeding; (iii) influenced a verdict of a juror in a federal proceeding; or (iv) injured the person or property of a juror as a result of the verdict in the federal proceeding, as is necessary to succeed on a claim under the first clause of § 1985(2). 42 U.S.C. §§ 1985(2). Second, Plaintiff has neither submitted evidence nor alleged that the Two Defendants conspired against Plaintiff because of his membership in an invidiously-defined class of persons, as required to succeed on claims under both the second clause of § 1985(2) and under § 1985(3). *See Griffin v. Breckenridge*, 403 U.S. 88, 102, 91 S.Ct. 1790 (1971)(regarding § 1985(3)); *Hahn v. Sargent*, 523 F.2d 461, 469 (1<sup>st</sup> Cir. 1975)(regarding § 1985(2)). Plaintiff’s argument in his Objection that Soccio and defendants conspired against him in his previous lawsuits because of his

membership in the class of “pro se inmates” is unavailing, Obj. at p. 9 – the criteria defining such a class is not invidious and Plaintiff does not provide any support for his bald assertion that he was discriminated against because of his membership in such class.

Accordingly, the Two Defendants have shown that there is no genuine issue as to any material fact and that they are entitled to judgment as a matter of law with respect to the § 1985 claims in the Complaint. I therefore recommend that the Two Defendants’ Motions for Summary Judgment be granted with respect to the § 1985 claims in the Complaint.

### **CONCLUSION**

In summary, I find that the Two Defendants have shown that there is no genuine issue as to any material fact and that they are entitled to judgment as a matter of law with respect to the claims against them in the Complaint under both § 1983 and § 1985. Accordingly, I recommend that the Two Defendants’ Motions for Summary Judgment be GRANTED and the Two Defendants be dismissed as defendants in this action.

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of Court within fourteen days of its receipt. Fed.R.Civ.P. 72(b); LR Cv 72(d). Failure to file timely, specific objections to this report constitutes waiver of both the right to review by the district court and the right to appeal the district court’s decision. *United States v. Valencia-Copete*, 792 F.2d 4, 6 (1<sup>st</sup> Cir. 1986)(per curiam); *Park Motor Mart, Inc. v. Ford Motor Co.*, 616 F.2d 603, 605 (1<sup>st</sup> Cir. 1980).

/s/ Jacob Hagopian  
Jacob Hagopian  
Senior United States Magistrate Judge  
October 5, 2010