UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

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| WAYMAN TURNER,<br>Plaintiff, | ) | |
| v. | ) | C. A. No. 06-505-M |
| A.T. WALL, DAVID McCAULEY,<br>JEFFREY ACETO, DR. EDORO<br>And STATE OF RHODE ISLAND,<br>Defendants. | ) | |

**OPINION AND ORDER**

JOHN J. McCONNELL, JR., United States District Judge.

Before this Court is a Motion for Summary Judgment by defendants A.T. Wall, David McCauley, Jeffrey Aceto and the State of Rhode Island (the "State")[1] seeking summary judgment on all counts. Plaintiff Mr. Turner does not oppose the entry of summary judgment for the individual defendants A.T. Wall, David McCauley or Jeffrey Aceto on all counts, nor does he oppose the entry of summary judgment for the State on the 42 U.S.C. § 1983 count. What remains for this Court to decide is whether Mr. Turner's claim of negligence against the State survives the State's motion for summary judgment.

I. Jurisdiction

Because Mr. Turner does not oppose the entry of summary judgment for all defendants on his foundational federal claims, those claims will be dismissed. This Court, however, may retain supplemental jurisdiction over Mr. Turner's remaining state law negligence claim pursuant to 28 U.S.C. § 1367(c)(3). The State contends that this Court should decline to do so and send

[1] Defendant Dr. Edoro was dismissed in 2010.

the matter to state court, while Mr. Turner argues for supplemental jurisdiction. When evaluating whether to exercise such jurisdiction, courts "take into account concerns of comity, judicial economy, convenience, [and] fairness." *Roche v. John Hancock Mut. Life Ins. Co.*, 81 F.3d 249, 256 (1st Cir. 1996).

The circumstances and travel of this case render it suitable for the exercise of supplemental jurisdiction. This matter has been pending in the United States District Court for more than four and a half years. There has been extensive motion practice and discovery deadlines have passed. And this Court does not see a good reason to send this matter to state court. *See Ciampi v. Zuczek*, 598 F.Supp.2d 257, 266 n.8 (D.R.I. 2009). As stated at oral argument on the motion, this Court will exercise its discretion to retain supplemental jurisdiction over Mr. Turner's state law negligence claim.

II. Background

On April 5, 2006, Mr. Turner was incarcerated at the Adult Correctional Institution ("ACI") in Cranston, Rhode Island. That morning, Mr. Turner was a late add-on to the list of inmates attending court. When Mr. Turner arrived for breakfast, dining room one -- where the other inmates going to court were eating -- was closed. Mr. Turner was directed to dining room two, where he encountered Mr. Garnetto, a fellow inmate. Mr. Garnetto assaulted Mr. Turner.[2]

While Mr. Turner alleges that the R.I. Department of Corrections ("RIDOC") knew that Mr. Garnetto was one of his enemies at the time of the assault, the State indicates that it is "unknown" whether Mr. Garnetto and Mr. Turner were designated as enemies in the RIDOC computer system at that time. This fact is in dispute.

[2] The aforementioned facts are not in dispute.

Mr. Turner contends that because Mr. Garnetto was an enemy of his, and that the RIDOC knew this, then the State had a duty to protect him from an assault by Mr. Garnetto and acted negligently by failing to do so. The State alleges it was Mr. Turner's responsibility to make known to prison officials when there was a possible encounter with an enemy and because Mr. Turner did not inform them, the RIDOC was not negligent. Mr. Turner asserts that the RIDOC should not have relied on ACI inmates to bring known enemy issues to the attention of RIDOC personnel without at least having previously advised inmates that they bore this responsibility.

III. Standard of Review

"Summary judgment is appropriate where 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.'" *Rivera-Flores v. Bristol-Myers Squibb Caribbean*, 112 F.3d 9, 13 (1st Cir. 1997) *quoting* Fed. R. Civ. Pro. 56. "[T]he moving party bears the burden of showing that no evidence supports the nonmoving party's position." *Toledo v. Van Waters & Rogers, Inc.*, 92 F.Supp.2d 44, 48 (D.R.I. 2000). This Court notes that "[g]enerally, a negligence claim is not grist for the summary judgment mill." *Miller v. George Arpin & Sons, Inc.*, 949 F. Supp. 961, 968 (D.R.I. 1997).

IV. Analysis

A. Expert Testimony

In its motion, the State contends that Mr. Turner's negligence claim fails as matter of law because he does not have an expert. While the State does not have authority for the proposition that a plaintiff in a negligence case concerning prison safety must have an expert, it contends that prison management and safety are beyond the ken of a normal person and therefore expert

testimony is required. However, the "Rhode Island Supreme Court has consistently held that only where the subject matter is particularly complex or peculiar is expert witness testimony necessary to assist the jury." *Butler v. McDonald's Corp.*, 110 F.Supp.2d 62, 71 (D.R.I. 2000). Further, expert testimony is not necessary "[i]f all the facts and circumstances can be accurately described to a jury and if the jury is as capable of comprehending and understanding such facts and drawing correct conclusions from them as is the expert." *Id.* (*quoting Barenbaum v. Richardson*, 114 R.I. 87, 328 A.2d 731, 733 (1974).)

Mr. Turner counters that he does not need an expert because the subject matter at issue in this particular case is one that average people can comprehend. This Court agrees. Although the record before this Court does not contain testimony by any expert disclosed under Federal Rule of Civil Procedure 26(a)(2), it does contain evidence sufficient to permit a jury to comprehend and understand the facts at issue and to draw conclusions from those facts. Furthermore, given the current posture of the case, with a single count of simple negligence against a single defendant, this Court finds that the issues are not "particularly complex or peculiar." Accordingly, because the State has not shown that a fact finder needs an expert's opinion to consider Mr. Turner's negligence claim, its argument that Mr. Turner's claim fails as matter of law on this ground is rejected.

B. Warden McCauley's Testimony

In further response to the State's motion, Mr. Turner alternatively suggests that if testimony from an individual with expertise in prison management and safety is needed to explain those issues to the jury, then the testimony already provided by RIDOC Warden

McCauley is sufficient.[3] The State counters that such testimony is not sufficient because Mr. Turner has not disclosed an expert, has not engaged an expert, and cannot compel a witness to give expert testimony.[4] This Court finds that if testimony from an individual with expertise and experience in prison safety protocols and policies is needed to assist the jury, then the testimony already provided by RIDOC Warden McCauley is adequate.

C. Disputed Issues

Finally, Mr. Turner claims that disputed issues of material fact exist on his negligence claim, including whether the RIDOC adequately informed him that he was responsible for bringing known enemy issues to the attention of RIDOC personnel in situations such as the one that occurred on the morning of April 5, 2006. Mr. Turner testified, in his deposition and by way of affidavit, that he believed that once he informed the RIDOC of a known enemy, it was RIDOC's obligation to keep those known enemies away from him; he was not informed that he bore responsibility for bringing known enemy issues to the attention of RIDOC personnel; and had he had been informed that it was his responsibility to bring known enemy issues to the attention of RIDOC personnel, then he would have notified RIDOC personnel of the known enemy issue before entering dining room two the morning of April 5, 2006.

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[3] Warden McCauley testified that: correctional officers at the Intake Services Center should take reasonable measures to keep inmates from encountering known enemies; it would be reasonable during the committing process for RIDOC to have either advised Mr. Turner that it was his obligation to bring known enemy issues to its attention or to gather information from him regarding his enemies; and if RIDOC had not informed Mr. Turner that he was expected to bring enemy issues to RIDOC's attention, then Warden McCauley would seek to correct that situation.

[4] The State's reliance on *Ondis v. Pion*, 497 A.2d 13 (R.I. 1985) is misplaced. In *Ondis*, a subpoenaed physician testified about care he had provided to the plaintiff, but declined to offer his opinion regarding the medical prognosis of the injury. The R.I. Supreme Court affirmed the trial justice's refusal to require that opinion testimony because to do so "would in essence involve a form of involuntary servitude." *Id.* at 18. Here, Mr. Turner directs this Court to existing deposition testimony; Mr. Turner does not ask this Court to compel a witness to offer testimony that the witness has declined to provide.

Because this Court finds that the aforementioned issues raised by Mr. Turner are both material and disputed, the State has failed to demonstrate the absence of a genuine issue of material fact and therefore the State's motion for summary judgment on the negligence claim must be denied.

V. Conclusion

Defendants' Motion For Summary Judgment is GRANTED IN PART and DENIED IN PART as follows: (i) the State's motion for summary judgment on the negligence count is DENIED; (ii) the State's motion for summary judgment on the § 1983 count is GRANTED as unopposed; (iii) A.T. Wall's motion for summary judgment is GRANTED as to all counts as unopposed; (iv) Jeffrey Aceto's motion for summary judgment is GRANTED as to all counts as unopposed; and (v) David McCauley's motion for summary judgment is GRANTED as to all counts as unopposed.

IT IS SO ORDERED:

John J. McConnell, Jr.
United States District Judge
Date: July 15, 2011