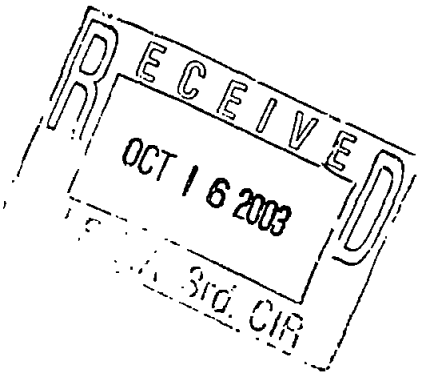

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

APPELLATE DOCKET NO. 03-3075

A.M., by and through his next friend and mother, J.M.K.,

APPELLANTS

v.

LUZERNE COUNTY JUVENILE DETENTION CENTER, a department of Luzerne County, Pennsylvania; SANDRA M. BRULO, individually and in her official capacity as chief administrator of the Luzerne County Juvenile Detention Center; LOUIS P. KWARCINSKI, individually and in his official capacity as deputy chief probation officer in charge of the Luzerne County Juvenile Detention Center; JEROME PRAWDZIK, in his individual capacity; CHRISTOPHER TRAVER, in his individual capacity; CHRISTOPHER PARKER, in his individual capacity; MICHAEL CONSIDINE, in his individual capacity; MARK PUFFENBERGER, M.D., in his official and individual capacity; ELAINE YOZVIAK, R.N., in her individual capacity,

APPELLEES

Appeal from the Order of the United States District Court
For the Middle District of Pennsylvania
Entered June 30, 2003 in Civil Action No. 3:01-CV-1276

BRIEF FOR THE APPELLANT

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CORPORATE DISCLOSURE STATEMENT

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STATEMENTS OF SUBJECT MATTER AND APPELLATE JURISDICTION

This Court has jurisdiction to review the final decision of the district court pursuant to 28 U.S.C. § 1291 (1988). The United States District Court for the Middle District of Pennsylvania has jurisdiction under 28 U.S.C. §§ 1331 and 1343 to hear this matter in that claims are asserted under the Constitution and laws of the United States, including federal laws providing for the protection of civil rights. Appellant's claims for declaratory relief are authorized by 28 U.S.C. § 2202 and 42 U.S.C. § 1983. Appellant timely filed a Notice of Appeal on July 14, 2003. (1a)

STATEMENT OF ISSUES

Whether the district court erred in granting summary judgment to all defendants on all of plaintiff's federal law claims, where the district court: (1) failed to consider all of the evidence presented in the light most favorable to plaintiff; (2) failed to apply the correct standards and/or misapplied the correct standards in assessing defendants' conduct; and (3) placed too high a burden on plaintiff at the summary judgment stage to prove that defendants' policies and customs directly caused plaintiff's injuries?

STATEMENT OF THE CASE

Appellant-Plaintiff, A.M., a minor (hereinafter "A.M." or "plaintiff"), filed this § 1983 action, by and through his next friend, J.M.K., in July 2001 in the United States District Court for the Middle District of Pennsylvania, against the Luzerne County Juvenile Detention Center, its chief administrators, and certain child care workers and medical professionals. (44a) The defendants-Appellees (hereinafter "defendants") were the detention center; Sandra Brulo, the

detention center's chief administrator; Louis Kwarcinski, the second in command; Jerome Prawdzik, the detention supervisor; Chris Traver, Michael Considine, and Chris Parker, child care workers; Mark Puffenberger, M.D., the detention center's physician; and Elaine Yozviak, a detention center nurse. Defendants detention center, Brulo, Kwarcinski, and Puffenberger were also sued in their official capacities. (44a)

The suit alleged that these state actors violated A.M.'s substantive due process rights under the Fourteenth Amendment to be free from harm and to receive appropriate mental health treatment while in their custody during a five-week period in the summer of 1999. The suit further alleged that the detention center failed to have policies and procedures in place to ensure: (1) the safety of youth in the detention center; (2) that such youth received appropriate health care services; and (3) that staff were appropriately trained to fulfill their duties with respect to both the youth's safety and health care needs. (44a) A.M. alleged that as a direct result of these violations, he suffered numerous physical injuries as well as severe emotional distress. *Id.* A.M. sought declaratory relief and compensatory and punitive damages for these constitutional breaches and violations of state tort law. *Id.*

After more than a year of discovery, including depositions of all defendants, plaintiff, plaintiff's mother and stepfather, and plaintiff's experts, all defendants filed motions for summary judgment. By an opinion and order dated June 30, 2003, the district court granted defendants' motions for summary judgment and entered judgment in favor of defendants on the federal law claims, and dismissed the remaining pendent state law claims for lack of subject matter jurisdiction without prejudice to A.M.'s ability to re-file such claims in state court. (18a) A.M. timely filed a notice of appeal. (1a)

STATEMENT OF THE FACTS

1. Preliminary Statement

This suit arises out of defendant juvenile detention center's repeated failures to prevent the almost daily victimization of A.M. by other residents during a five-week period in the summer of 1999, despite abundant information – including defendants' own documentation – that such abuse was ongoing. A.M. alleges that the detention center's failures to protect A.M. from this recurring victimization were directly attributable to the center's constitutionally deficient policies and procedures.

A.M., who was then just 13 years-old, 4'11" and about 90 pounds, was brought to the Luzerne County Juvenile Detention Center (the "detention center") on July 12, 1999 upon being arrested for the first time. A.M. was charged with indecent contact and remained in custody until the juvenile court entered a final disposition on August 19, 1999. As demonstrated *infra*, from the first day of his admission, detention center administrators and staff knew that A.M. had an extensive history of psychiatric hospitalizations. His mental health history, combined with his small size and the fact that he was charged with a sexual offense, made A.M. particularly vulnerable to victimization by older and bigger youth in the facility. This possibility of victimization quickly turned into reality, as A.M. was hit and kicked by other youth, punctured with unknown objects, and tormented with such practices as putting feces in his bed and holding his head upside down in a toilet, throughout his five-week commitment.

Much of this abuse could have been avoided if defendants had acted on what they learned about A.M. both at admission and from their own documentation of his ongoing abuse and suffering. There is no question that detention center staff knew of these recurring assaults, as

demonstrated by numerous incident reports prepared by line staff that are described *infra*. These reports also alerted supervisory officials that A.M.'s verbally provocative behavior, a symptom of his untreated mental health disorders, often times instigated the chain of events that would escalate and culminate with A.M. being physically abused by other youth.

But what the evidence adduced in discovery and presented *infra* also shows is a detention center whose staff was woefully ill-prepared to meet the challenge of keeping A.M. out of harm's way. Deficient staffing and supervision, marked by diffuse and ambiguous points of responsibility and accountability, inadequate training (particularly with respect to de-escalating conflict and identifying and protecting at-risk youth), and the lack of a coherent mental health treatment program, directly contributed to the injuries A.M. suffered at the hands of other youth. The evidence also shows a number of opportunities for staff -- to learn from past mistakes and to come up with a safety and treatment plan for A.M. -- that were missed due to conflicting instructions, poor communication and a lack of simple common sense. Most importantly, what the evidence summarized *infra* shows is that with respect to all of plaintiff's claims of unconstitutional conduct by defendants, genuine issues of material fact were plainly in dispute and defendants could not possibly have been entitled to judgment as a matter of law. Moreover, given that plaintiff's expert testimony was unrebutted, the district court's failure to find, within the context of summary judgment, that the alleged unconstitutional policies and practices led "at least in part" to plaintiff's injuries is incomprehensible.

2. The Record Below

From the first day of his detention, staff were put on notice that special measures were required to keep A.M. safe. Specifically, the detention center's administrators and supervisors –

defendants Brulo[1], Kwarcinski[2] and Prawdzik[3] – and its physician and nurse – defendants Puffenberger[4] and Yozviak,[5] respectively – knew that A.M.: (1) had 11 prior inpatient psychiatric hospitalizations. (136a) (physical examination) and (309a) (Kwarcinski dep.); (2) had been on psychotropic medication to treat his ADHD as recently as June 1999. as prescribed by a psychiatrist, Dr. Feussner. whom A.M. had been seeing in the community, (136a) (physical

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[1]Brulo, as chief administrator of the detention center, was responsible for: overseeing the center's operations. including the overall training and supervision of staff; ensuring compliance with Pennsylvania regulations; establishing a medical program; and drafting memos that set forth center procedures. (196a, 179a) (regulations); (215 a- 216a) (Brulo dep.); (287a, 539a) (Kwarcinski dep.) She and Kwarcinski also were charged with ensuring that staff hires. including child care workers, met regulatory standards. (218a-220a) (Brulo dep.); (272a, 275a-277a, 278a, 295a) (Kwarcinski dep.); (339a-340a) (Prawdzik dep.)

[2]Kwarcinski, the deputy administrator, was responsible for overseeing daily operations, including monitoring the detention supervisor, Prawdzik, and developing and implementing the staff training program, including reviewing training requirements and scheduling staff for training. (217a) (Brulo dep.); (265a-266a, 279a, 284a) (Kwarcinski dep.); (314a-315a) (Parker dep.)

[3]Prawdzik, as detention supervisor, directly supervised the child care workers. (217a) (Brulo dep.); (293a) (Kwarcinski dep.); (325a-326a) (Prawdzik dep.); (359a) (Traver dep.): (315a) (Parker dep.)

[4]Puffenberger's obligations included: providing a complete medical evaluation of each child upon entry into detention; caring for sick children at the facility as requested by the nurse under his charge; and assisting the administrator in developing a medical plan that provided for all of the arising physical, behavioral, and dental health needs of detention center residents, either through his own care or by proper referral. *See* (176a) (Puffenberger Contract); (196a) (179a) (regulations); (256a, 543a-544a) (Brulo dep.)

[5]Yozviak's responsibilities included monitoring the children's health care needs, and alerting the doctor of any problems or issues that arose, (377a) (Puffenberger dep.) and (240a) (Brulo dep.); contacting psychiatrists who had been treating youth in the community prior to their detention, (404a, 417a) (Yozviak dep.) and (387a) (Puffenberger dep.); and informing child care workers and management about a youth's important medical history, including mental health background, and directing child care staff to record that information in the unit logs so that all staff would be made aware of it. (334a-335a) (Prawdzik dep.); (239a) (Brulo dep.); (407a) (Yozviak dep.)

examination), (607a-608a) (Brulo dep.), (868a-869a) (Kwarcinski dep.); (3) was a young, small boy (13-years-old, 4'11", and 92 lbs), (136a) (physical exam), (421a) (questionnaire), (284a-285a, 310a, 821a-823a) (Kwarcinski dep.); (4) had been arrested for the first time and this was his first time in detention, (296a); and (5) was charged with indecent contact. (605a-606a) (Brulo dep.)

Defendants Brulo, Kwarcinski and Prawdzik were responsible for supervising defendants Traver, Considine and Parker, who were employed as child care workers in the summer of 1999. (143a-145a) (training rosters), (359a) (Traver dep.), (356a) (Considine dep.), (314a) (Parker dep.) Traver, Considine and Parker were charged with directly supervising A.M. and the other youth at all times to ensure their safety and well-being. (193a) (regulations); (191a) (job description) But in the course of A.M.'s detention, the supervisors became aware that child care workers were having difficulty managing A.M.'s behavior of verbally teasing and provoking other youth in the facility, that as a result the other youth were assaulting and harassing A.M., and that certain child care workers were using inappropriate techniques to deal with A.M.'s behavior, as was documented in numerous incident reports and log entries. *See, e.g.,* the following incident reports: (135a) (7/26/99); (141a) (8/1/99); (195a) (8/1/99); (139a) (8/1/99); (140a) (8/2/99); (130a) (8/3/99); (510a) (8/3/99); (129a) (8/4/99); (128a) (8/5/99); (127a) (8/7/99); (480a) (8/6/99); (132a) (8/9/99); (126a) (8/9/99); (481a) (8/16/99); and (131a) (undated). *See also* (234a-236a, 238a) (Brulo dep.); (285a, 837a-839a, 307a-308a) (Kwarcinski dep.); (186a.) (Prawdzik memo).

In addition to their own internal documentation, defendants received information from outside sources confirming that A.M. was being subjected to ongoing abuse that was likely to

continue if defendants did not implement a coherent safety plan. For example, A.M.'s mother, J.M.K., testified, *inter alia*, that she made numerous phone calls to the supervisors to inform them that she had seen bruises and marks on A.M.'s body when she visited him, and A.M. told her he was being beaten up by the other boys. (428a-437a) After the July 23, 1999 court-ordered psychiatric evaluation of A.M.,[6] the supervisors and medical staff also had access to the following information: (1) that A.M. had a long history of involvement with the local mental health system, including prescribed treatment services and medications; (2) that A.M. was having difficulty in the detention center because of his untreated ADHD, in that he was hyperactive and provocative with his peers, who would retaliate against him by physically assaulting him; (3) that the psychiatrist's diagnosis of A.M. included a Global Assessment Functioning (GAF) scale of 20-30 (out of a possible 100) which, according to the DSM-IV, indicates behavior that is considerably influenced by delusions or hallucinations, or serious impairment in communication or judgment, or an inability to function in almost all areas[7]; and that (4) A.M. needed a highly planned day "7 days a week, 365 days a year," in order to control his restlessness and impulsivity. (150a-153a) However, there is no evidence that any of the supervisors or medical staff bothered to read the evaluation while A.M. was in the detention center, much less take any effective action based on it.[8]

Instead the record below demonstrates that the detention center's administrators and

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[6]The court had ordered the evaluation for disposition planning purposes. (230a-231a) (Brulo dep.)

[7]*See* 170a (excerpt from DSM-IV).

[8]A.M. acknowledges that the psychiatrist entered an order with the nurse to start A.M. on dexedrine, and that there is evidence in the record that he received the medicine after 7/23/99.

supervisors consistently failed to take action with respect to A.M.'s safety and mental health needs and, when they did take action, it was ineffectual in that the supervisors did not ensure that their orders were being carried out by subordinate staff. Further, the medical professionals on staff failed to use their knowledge about A.M.'s medical needs to ensure that he received the necessary protection and care that his mental health history required. Untrained, undirected, and understaffed child care workers provided A.M. with little or no supervision or protection, despite their documented knowledge that he was unable to appropriately adjust to the detention center environment.

First, the supervisors gave the child care staff contradictory orders with regard to where and with whom A.M. should be placed within the facility. *See and compare* 7/28/99 Brulo memorandum to Kwarcinski and Prawdzik (143a) (directing that A.M. should spend the majority of his day in the girls' quarters), *with* 7/28/99 boys' unit log entry (125a) (directing that, as per Kwarcinski's instructions, A.M. was to be kept on the boys' side at all times). [9]

Second, child care workers failed to properly segregate A.M., as demonstrated by a number of incident reports and log entries after the 7/28/99 instructions that indicate that A.M. was, in fact, placed with other boys who had previously assaulted and threatened him. *See incident reports cited on page 6 supra.*[10]

According to various defendants' testimony, neither the child care workers nor detention

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[9]The log entry reads that "M.A." was to be segregated. But the morning report listing the names of all youth in the center on 7/28/99, filed under seal at (1012a), shows that there was no youth named M.A. in the facility; *see also* boys' unit log entry dated 7/26/99 (146a) (also stating that as per Kwarcinski, A.M. was to be segregated from the population).

supervisor Prawdzik had the authority to decide where in the facility A.M. was to be placed on any given day, or what child care staff would monitor him, and only Kwarcinski was authorized to make those decisions. (247a-248a) (Brulo dep.); (349a-350a) (Prawdzik dep.); (305a) (Kwarcinski dep.); (361a-362a, 366a, 368a) (Traver dep.) However, when closely questioned about the several instances when child care staff failed to segregate A.M. and, in fact, allowed him to be with boys who had previously assaulted him (as shown by the incident reports and log entries cited *supra*), Kwarcinski could not definitively say who had authorized A.M.'s placements on those occasions, but indicated that it likely had been him and Prawdzik. (306a-307a)

Moreover, child care staff would personally witness disagreements at their inception, watch them escalate, and fail to intervene to prevent the physical assault on A.M.. *See, e.g.*, (130a) (8/3/99 incident report) and (129a) (8/4/99 incident report).[11] And despite the fact that A.M. was hit, punched and kicked on a number of occasions, detention center records indicate only one instance, (149a) (nurse's comments), when child care staff took A.M. to see the nurse for follow-up.

Third, child care workers testified that their supervisors never communicated any information to them about A.M.'s special needs, (361a- 362a) (Traver dep.) and (320a) (Parker dep.), as was evidenced by the lack of any entries recorded in the facility's logs about A.M.'s

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[11]In fact, staff members at Northwestern Academy, the facility to which A.M. was transferred on 8/19/99 for his court-ordered disposition, stated that T.M., a youth who had been in detention with A.M. and was similarly transferred to Northwestern, confirmed that detention center staff would allow A.M. to get beat up because they were sick of him and he "deserved it." (471a-475a) (Kahn dep.); (161a) (DeAngelo incident report)

mental health history.[12] Neither the detention supervisor nor the nurse recalled having any meetings to discuss how to better manage A.M.'s behavior, and the nurse does not recall seeing any memoranda. (333a, 336a) (Prawdzik dep.); (419a-420a) (Yozviak dep.) Nor is there any record that the nurse informed the child care workers of A.M.'s numerous prior psychiatric hospitalizations and mental health problems; there are no log entries or other written documentation to that effect. (413a) (Yozviak dep.)

Fourth, there is conflicting evidence as to whether any of the detention center staff contacted Dr. Feussner, A.M.'s treating psychiatrist in the community, to discuss his medication or treatment needs. Brulo points to two notes that she purportedly made at the time – 133a and 134a – as evidence that she and nurse Yozviak contacted Dr. Feussner to refill A.M.'s prescription and arrange for an evaluation. (230a- 231a, 613a- 614a) However, the first referral form is dated 7/14/**01** (134a), and the referral confirmation, (133a), is dated 7/16/**01**, indicating that Dr. Gitlin would evaluate A.M. on 7/23/**01**. Because these critical documents are dated July 2001 – the very same month and year that A.M. filed his complaint – they are hardly credible. Moreover, there is no written record of a conversation between Dr. Feussner and Yozviak.[13]

Fifth, after Dr. Gitlin's evaluation on 7/23/99, there is no evidence that any mental health professional was called in to see A.M. or consult with the staff, despite the ongoing difficulty child care workers were having in managing A.M.'s behavior. Child care workers did not have

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[12]If such information had been communicated to the child care workers, it was expected that they would have recorded it in the unit logs. (334a) (Prawdzik dep.)

[13]See also affidavit of A.M.'s attorney Lourdes M. Rosado, Esq.,(351a), stating that she spoke by telephone with Dr. Feussner on 11/17/99 and that at that time, Dr. Feussner had not known about A.M.'s court involvement or that he had been in detention.

the authority to call in outside mental health professionals for consultation. (697a-698a) (Brulo dep.), (350a) (Prawdzik dep.), (366a) (Traver dep.), nor did the nurse. (402a-403a, 406a-408a, 416a- 417a) (Yozviak dep.) Indeed, when asked if he sought consultation with any mental health or behavioral specialist with regard to A.M. during his detention, Kwarcinski responded that A.M. was "just a behavior problem" and "like a dull toothache," and that he had discussions with Yozviak and other detention center staff but "[t]hey never centered around his specific mental health problems." (309a-310a) Despite being informed by Dr. Gitlin on 7/23/99 that A.M. was being beat up by other boys and shown the bruises on A.M.'s arms, (151a),[14] there is also no evidence that nurse Yozviak took any action with respect to that information.

The record is thus replete with evidence that the detention center staff failed repeatedly to act on the considerable information at their disposal and implement a safety plan for A.M. There is additional evidence which also raises serious questions as to the constitutional sufficiency of defendants' policies and procedures.

Specifically, as described in the Argument *infra*, there was evidence adduced in discovery that in 1999 the detention center had a policy, custom and/or practice of: (1) hiring child care workers who did not meet the minimum qualifications as set forth in state regulations, see pp. 22-24 *infra*; (2) not requiring child care staff to engage in any pre-service training, and having an inadequate training program for their child care workers (particularly with respect to de-escalating conflicts between youth and managing youth behavior generally; dealing with sex offenders; or identifying and protecting youth in the population who would be easily victimized), see pp. 24-26 *infra*; (3) not ensuring that there was adequate child care staff on duty to directly

[14]Yozviak confirmed that she was the nurse on duty that day. (397a-398a)

supervise youth at all times, see pp. 27-28 *infra;* (4) not having protocols with respect to key areas of center operations, including review and follow-up of incident reports prepared by child care workers, how to manage problematic youth behavior, de-escalating conflicts or respond to physical altercations, how to identify and protect children at risk of victimization, or protecting the confidentiality of youth's records, *see pp. 29-31 infra*; and (5) failing to establish, as per regulations, a medical plan that, *inter alia*, addressed the physical and mental health needs of children, including failing to designate a physician to assist the center's administrator in planning and coordinating a comprehensive medical plan. *See pp. 32-40 infra.*

Finally, the considerable emotional and physical harm to A.M. that resulted from the detention center staff's acts and omissions is well-documented in the record below. Staff at Northwestern Academy, where A.M. was transferred immediately after his confinement at the detention center, documented numerous injuries on A.M.'s body as well as his emotional distress in the days following his arrival. (159a) (CY 47); (161a-163a) (Northwestern incident report); (444a-449a) (DeAngelo dep.); (154a) (Northwestern incident report); (453a-470a) (Kahn dep.) As noted above, A.M.'s mother, J.M.K., saw bruises and wounds on A.M.'s body when she would visit him at the detention center prior to his transfer to Northwestern, and A.M. would describe the assaults to her. (428a-432a, 437a) *See also* (477a- 478a) (K.K. dep) There also is conflicting evidence as to whether A.M. lost 15 pounds during his five week detention. *See* (169a) (Northwestern intake summary), *but see* (158a) (Northwestern intake face sheet). Lastly, A.M.'s psychiatric expert concludes that A.M. has suffered long-term consequences as a result of his detention, (92a), noting that "the maltreatment that occurred at the detention center caused an acute deterioration of (A.M.'s) clinical status and functional status" and the downward spiral in

A.M.'s mental health exacerbated by his detention made him more vulnerable to high risk behavior, self-loathing and self-denigration, substance abuse problems, and possible suicide. (107a)

STATEMENT OF RELATED CASES AND PROCEEDINGS

This case has not been presented to this Court previously. To the knowledge of appellant's counsel, there are not other related cases, either pending or completed, in this Court or any other court or agency.

STATEMENT OF THE STANDARD OF REVIEW

On appeal, this court reviews the district court's grant of summary judgment *de novo*. *See, e.g., Pennsylvania Coal Ass'n v. Babbitt*, 63 F.3d 231, 236 (3d Cir. 1995). "This requires that [the court] view the underlying facts *and all reasonable inferences* therefrom in the light most favorable to the party opposing the motion." *Id.* at 236 (citation omitted; emphasis added); *see also Helen L. v. DiDario*, 46 F.3d 325, 329 (3d Cir. 1995); *Valhal Corp. v. Sullivan Assocs., Inc.*, 44 F.3d 195, 200 (3d Cir. 1995); *Goodman v. Mead Johnson & Co.*, 534 F.2d 566, 573 (3d Cir. 1976.)

Summary judgment should be granted only if a court concludes 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." Fed.R.Civ.P. 56(c). The moving party bears the burden of proving that no genuine issue of material fact is in dispute. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 n. 10 (1986). Only after the party moving for summary judgment carries the initial burden, must the nonmoving party "come forward with 'specific facts showing that there is a genuine

issue for trial.' " *Id.* at 587. The non-movant must present evidence that, when viewed in a light most favorable to him and coupled with all reasonable inferences therefrom, supports the essential elements of his claim. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986.)

In making this determination, it is not within the province of this Court to assess the credibility of the evidence provided; rather, the Court must simply insure that there is a genuine issue of fact, material to the resolution of the underlying claims, to be decided by the jury. *Goodman*, 534 F.2d at 573 (providing that the non-movant's allegations must be taken as true and when these assertions conflict with those of the movant, the former must receive the benefit of the doubt); *Graham v. F.B. Leopold Co., Inc*, 779 F.2d 170, 172 (3d Cir. 1985) ("If...there is *any* evidence in the record from *any* source from which a reasonable inference in the respondent's favor may be drawn, the moving party simply cannot obtain a summary judgment.") (*quoting In Re Japanese Electronic Products Antitrust Litigation*, 723 F.2d 238, 258 (3d Cir. 1983) *rvsd on other grounds* 475 U.S. 574 (1986), *remanded to* 807 F.2d 44 (1986)) (emphasis added).

It is through this lens that this Court must now assess the evidence provided by plaintiff, careful not to affirm the district court's grant of summary judgment unless the court has resolved "any doubts as to the existence of genuine issues of fact against the moving parties." *Hollinger v. Wagner Mining Equipment Co.*, 667 F.2d 402, 405 (3d Cir. 1982) (*quoting Ness v. Marshall*, 660 F.2d 517, 519 (3d Cir. 1981). Any inferences drawn from the evidence by the trial court in dismissing the claim are irrelevant to review of the summary judgment decision. *Graham*, 779 F.2d at 173.

SUMMARY OF ARGUMENT

The District Court's grant of summary judgment must be reversed. In ruling that plaintiff failed to establish the existence of genuine issues of material fact entitling defendants to judgment as a matter of law, the district court either overlooked vast portions of plaintiff's evidence or failed to review it in the light most favorable to plaintiff, the non-moving party. The district court also misapplied relevant case law. In particular, by reducing hundreds of pages of documents, deposition excerpts, and expert reports, to no more than a few paragraphs, and summarizing plaintiff's evidence as involving only allegations of "*physical* abuse that he suffered at the hands of other residents" (21a) (emphasis added), the court inaccurately cast this case as one involving little more than non-serious physical injuries and harmless delays in delivering medical treatment. To the contrary, plaintiff established through discovery that he was subjected to repeated physical and emotional abuse and harassment by other residents at the detention center, with no meaningful or effective response by defendants to stop the abuse and harassment, protect him, or manage the behavior of the other residents. The district court completely overlooked or ignored plaintiff's expert reports which directly tied defendants' unconstitutional actions, or inactions, to the physical and emotional harm he suffered, both within the facility and following his release. These harms and their consequences were well-documented in both of plaintiffs' experts' reports which were *uncontroverted* in the record below.

The district court's failure to properly credit and characterize plaintiffs' evidence was compounded by its failure to consider applicable case law, or its mis-application of case law. Throughout its opinion, the district court repeatedly shunts aside plaintiff's claims, with little citation to legal authority. By breaking apart and isolating defendants' alleged unconstitutional

practices – inadequate staffing and training, failure to supervise, failure to have policies and procedures in place to protect plaintiff, and failure to have a medical and behavioral health plan – the court both trivialized plaintiff's claims and failed to see them as a continuum of actions or omissions by defendants that collectively demonstrate how defendants consciously disregarded a substantial risk that harm would occur to plaintiff. Moreover, when the court cited legal authority, this case was analogized to cases challenging the conduct of prison officials acting in emergency circumstances to quell prison disturbances. By relying on adult prison cases involving exigent circumstances rather than scenarios involving juvenile detention center officials with enough time to document, day after day, the physical and emotional harassment of plaintiff, the district court was inexorably led to the erroneous conclusion that plaintiff could establish no set of facts from which a reasonable jury might find that his rights to substantive due process under the Fourteenth Amendment had been violated.

Similarly, the district court's holding that plaintiff failed to demonstrate a "plausible nexus" or "affirmative link" between the identified government policies or customs of defendants and the constitutional harm suffered by plaintiff is in error.[15] (28a) (citing *Kneipp v. Tedder*, 95 F.3d 1199, 1213 (3d Cir. 1996) and *Bielevicz v. Dubinon*, 915 F.2d 845, 850 (3d Cir. 1990)). However, the district failed to include in its opinion key language from *Bielevicz* that elucidates

[15]It is important to note that the district court, in that section of its opinion addressing plaintiff's official capacity claims, (37a), never stated that plaintiff's failed to produce evidence of the existence of a government policy or custom, which is the first step in establishing municipal liability under § 1983. *Andrews v. City of Philadelphia*, 895 F.2d 1469, 1480 (3d Cir. 1990). Instead, the district court specifically ruled that plaintiff's failed to adduce evidence with regard to the second step in establishing municipal liability under § 1983, that there is a "plausible nexus" or "affirmative link" between the policy/custom and the harms to plaintiff. For this Court's reference, plaintiff does describe herein the evidence presented below that establishes the existence of certain deficient policies and/or customs at the detention center.

plaintiff's burden with respect to causation at the summary judgment stage. Specifically, *Bielevicz* holds that "[a]s long as the causal link is *not too tenuous*, the question whether the municipal policy or custom proximately caused the constitutional infringement *should be left to the jury*. *Id.* at 851 (citation omitted) (emphasis added). *Accord Kneipp*, 95 F.3d at 1213. The *Bielevicz* court further informs that plaintiff "need not demonstrate that [his] injuries were the direct result" of government policy or custom, *id.*, that plaintiff need only produce evidence that the policy/custom at issue "*at least in part*" led to his injury, *id.* (emphasis added), and that "'[a] sufficiently close causal link between ... a known but uncorrected custom or usage and a specific violation is established if occurrence of the specific violation was made *reasonably probable* by permitted continuation of the custom.'" *Id.* at 851 (quoting *Spell v. McDaniel*, 824 F.2d 1380, 1391 (4th Cir. 1987) (emphasis added).

Plaintiff respectfully asserts that the district court failed to apply the correct test, as described *supra*, in ruling on the question of causation. Instead, the district court placed too high a burden on plaintiff at the summary judgment stage, effectively requiring that plaintiff prove that the identified policies or customs did in fact directly cause plaintiff's injuries. As demonstrated *infra*, A.M. produced sufficient evidence to the district court to meet the appropriate legal standard, i.e., that his injuries were "at least in part" caused by or made "reasonably probable" by the identified policies and customs, such that the question of causation should have been left to a jury. In fact, when measured against the proper Fourteenth Amendment standard described *infra*. and reviewing *all of the evidence in the light most favorable to plaintiff*, it is clear plaintiff must be given the opportunity to present his case to the jury.

ARGUMENT

I. THE DISTRICT COURT'S GRANT OF SUMMARY JUDGMENT TO DEFENDANTS BRULO, KWARCZINSKI AND PRAWDZIK MUST BE REVERSED BECAUSE THESE DEFENDANTS' ACTIONS OR INACTIONS VIOLATED PLAINTIFF'S RIGHTS TO SUBSTANTIVE DUE PROCESS UNDER THE FOURTEENTH AMENDMENT

Supreme Court precedent establishes that while the plaintiff was in the physical custody of the Luzerne County juvenile detention center, he had a constitutionally- protected liberty interest to be protected from harm and to receive appropriate medical care and treatment. Like foster children committed to the care and custody of the state, the scope of plaintiff's liberty interest must be measured against the strictures of Fourteenth, rather than Eighth. Amendment jurisprudence. *See DeShaney v. Winnebago County Dept. of Social Servs.*, 489 U.S. 189, 199-200 (1989) ("[W]hen the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs – e.g., food, clothing, shelter, medical care and reasonable safety -- it transgresses the substantive limits on state action set by the . . . Due Process Clause.)[16] *See also Charlie H. v. Whitman*, 83 F.Supp. 2d 476, 482-486 (D. N.J. 2000) (children in state care, because they may no longer be protected by their parents, have a substantive due process right to protection from harm and to receive care, treatment, and services consistent with competent professional judgment.); *Ingraham v. Wright*, 430 U.S. 651, 671-672 n. 40, (1977); *Bell v. Wolfish*, 441 U.S. 520, 535 (1979) ("Under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law.")[17]

[16] The district court inexplicably fails to even cite *DeShaney* in its opinion.

[17] While the district court explicitly recognizes this requirement at the outset of its analysis, the court drew almost exclusively upon Eighth Amendment jurisprudence in denying the plaintiff relief.

In the case at bar, plaintiff's liberty interests are plainly protected by the less-deferential substantive due process standard conferred by the "special relationship" entered into between the state and the plaintiff's family when the state took him into care. *See Nicini v. Morra*, 212 F.3d 798, 807-808 (3d Cir. 2000) (holding that child in foster care has "special relationship" with state that grows from limitation it places upon other individuals, such as the child or his or her parents, to act on his behalf, thus warranting constitutional protection under § 1983.) "When a person is institutionalized—and wholly dependent on the State—it is conceded ... that a duty to provide certain care and services does exist." *Youngberg v. Romeo*, 457 U.S. 307, 315 (1982). The duty to provide these services, and the nature of the services that must be provided, is not coterminous with the Eighth Amendment prohibition against cruel and unusual punishment, but rather requires an individualized determination of the obligations created by the state-entered "special relationship." *See Youngberg*, 457 U.S. at 315-316.

In order to survive summary judgment on his claims under the Fourteenth Amendment, A.M. must show that when the facts are considered in the light most favorable to him, the action or inaction of the defendants constituted deliberate indifference to his rights to the extent that it "shocks the conscience." *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998); *Ziccardi v. Philadelphia*, 288 F.3d 57, 64-66 (3d Cir. 2002) (en banc). However, the "exact degree of wrongfulness necessary to reach the 'conscious- shocking' level depends upon the circumstances of a particular case." *Miller v. City of Philadelphia*, 174 F.3d 368, 375 (3d. Cir. 1999); *see also Nicini*, 212 F.3d 798 at 810 ("a plaintiff seeking to establish a constitutional violation must demonstrate that the official's conduct 'shocks the conscience' in the particular setting in which that conduct occurred"). Due Process, regardless of the standard at play, is contextual; due

process rules should not be applied mechanically. *Lewis*, 523 U.S. at 850; *Rochin v. California*, 342 U.S. 165, 172 (1952). Instead,

> [w]hether executive action is conscience shocking and thus "arbitrary in the constitutional sense" depends on the context in which the action takes place. In particular, the degree of culpability required to meet the "shock the conscience" standard depends on the particular circumstances that confront those acting on the state's behalf.

Schieber v. City of Philadelphia, 320 F.3d 409, 417 (3d Cir. 2003) (citing *Lewis*, 523 U.S. at 848-49). *Accord Boyanowski v. Capital Area Intermediate Unit*, 215 F.3d 396, 401 (3d. Cir. 2000); *Miller*, 174 F.3d at 375.

To determine whether state action shocks the conscience such that a substantive due process violation has occurred, this Court has defined at least three distinct standards of culpability. *Schieber*, 320 F.3d at 422 (citing *Ziccardi*, 288 F.3d at 65-66 and *Miller*, 174 F.3d at 375). In high-pressured situations such as prison riots or high-speed police chases where there is no time to deliberate, for example, defendants must have acted with *subjective intent to harm*, i.e., knowledge that the harm was practically certain. *Id.* *See also Lewis*, 523 U.S. at 852-54 (citing *Whitley v. Albers*, 475 U.S. 312, 320 (1986)).

High-pressured situations are distinguished from those in which actors, while not having to make split-second decisions, still must choose between conflicting interests in a time-sensitive environment. *Schieber*, 320 F.3d at 422-23. Here, the Third Circuit has held that a lower standard of culpability – that defendants consciously disregarded a *great* risk that *serious harm* would result – is applicable when evaluating the actions of a social worker who removed a child from her parent upon an allegation of abuse. *Id.* (citing *Miller*, 174 F.3d at 375 and *Ziccardi*, 288 F.2d at 66) (emphasis added). While not required to make a decision within seconds as in a

police chase, the caseworker has to act with some speed; moreover, the caseworker has to choose between two competing interests – the parent's interest in his/her child and the state's interest in the child's welfare. *Id.* at 422 (citing *Miller*, 174 F.3d at 375).

This court has determined that a still lower level of culpability applies when state actors are not required to make split-second decisions involving choices between competing interests. *Id.* at 418-419 (citing *Lewis*, 523 U.S. at 851-53) and 422-23 (citing *Miller*, 174 F.3d at 375 and *Ziccardi*, 288 F.3d at 66). Specifically, the actions of prison officials with regard to an inmate's day-to-day welfare are to be judged against this even lower level of culpability, *id.* at 418-19 (citing *Lewis*, 523 U.S. at 851-53), because in the custodial situation of a prison, "forethought about an inmate's welfare is not only feasible but obligatory under a regime that incapacitates a prisoner to exercise ordinary responsibility for his own welfare." *Lewis*, 523 U.S. at 851. Moreover, there is no countervailing interest that would prevent the state from providing for the "decent care and protection of those it locks up." *Id.* Measured against this standard, a state actor is liable if he or she consciously disregarded a "'*substantial* risk that the *harm* would occur.'" *Schieber*, 320 F.3d at 422-23 (quoting *Ziccardi*, 288 F.3d at 66) (emphasis added). Where this court has previously applied this standard to prison officials responsible for the day-to-day care of sentenced adult inmates, plaintiff's burden can be no greater in establishing defendant's culpability in the instant case, involving the day-to-day care and supervision of pre-trial and un-sentenced juveniles. With a record replete with evidence of defendants' day-by-day, week-after-week *documentation* of plaintiff's difficulties with other residents, it can hardly be argued that "forethought about [plaintiff's] welfare was [not] feasible." *Lewis*, 523 U.S. at 851.

In Counts I and II of his amended complaint, plaintiff sues defendants detention center

and Brulo, Kwarcinski and Prawdzik[18] in their official and individual capacities.[19] Specifically, plaintiff challenges defendants' deficient hiring, staffing and training practices: inadequate staff supervision; lack of policies or procedures for ensuring the safety of youth in the facility; and lack of policies or procedures to address the physical and mental health needs of residents. Each

[18]Prawdzik is only sued in his individual capacity. In this first count, plaintiff also sues defendant Mark Puffenberger, M.D., in his official capacity for failure to treat. Plaintiff's claims against defendant Puffenberger are discussed *infra* at pp. 36-40.

[19]Suits against government officials in their official capacity are treated as suits against the government entity. *Hafer v. Melo*, 502 U.S. 21, 25 (1991) (citing *Kentucky v. Graham*, 473 U.S. 159, 166-67 (1985). For a government entity to be held liable under Section 1983, the entity's policy or custom must have played a part in the constitutional violation. *Id.; Monell v. New York Dept. of Social Servs.*, 436 U.S. 658, 694 (1978). In substantive due process cases in which the policy of a municipality and its officials is at issue -- as contrasted to Eighth Amendment prison cases -- the test for deliberate indifference is whether officials with policy-making authority had either actual or constructive notice of a risk of harm, but consciously disregarded it. *Farmer v. Brennan*, 511 U.S. 825, 840-41 (1994) (citing *Canton*, 489 U.S. at 390 and n. 10); *Schieber*, 320 F.3d at 421 n. 4. As the Court stated in *Canton*:

> [I]t may happen that in light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in a violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need.

489 U.S. at 390. *Accord Simmons v. City of Philadelphia*, 947 F.2d 1042, 1064, 1069 (3d Cir. 1991); *Colburn*, 838 F.2d at 669. *See also Sample v. Diecks*, 885 F.2d 1099, 1114 (3d Cir. 1989) ("When an official authorizes constitutionally inadequate procedures, the official's liability is not negated by a showing that he or she did not intend to deprive the plaintiff of due process of law.") There also must be a direct causal link between the deficient policy or custom and the alleged constitutional violation. *Canton*, 489 U.S. at 385; *Brown v. Commonwealth of Pennsylvania*, 318 F.3d 473, 482 (3d Cir. 2003) (citing *Canton*).

Third Circuit jurisprudence also provides that in substantive due process cases against government actors in their individual capacities, the appropriate standard with regard to knowledge is an objective one, i.e., whether the actor knew or should have known of a substantial risk of harm to the plaintiff but recklessly disregarded it, as opposed to a subjective standard. *See Colburn*, 838 F.2d at 669 ("if [custodial] officials know or should know of the particular vulnerability to suicide of an inmate, then the Fourteenth Amendment imposes on them an obligation not to act with reckless indifference to that vulnerability.") *See also Tazioly v. City of Philadelphia*, 1998 WL 633747 at *14-*15 (E.D. Pa., 1998) (applying objective knowledge test to determine liability of government actors sued in their individual capacities for violation of Substantive Due Process).

of these alleged constitutional violations by defendants will be discussed separately below. Ultimately, however, these actions and inactions by defendant form an unbroken thread of deliberate indifference to plaintiff's constitutional right to be free from harm and to receive appropriate care while in defendants' custody. And as the record more than demonstrates, genuine issues of material fact remain in dispute with respect to these claims.

A. Deficient hiring, staffing and training practices

With respect to plaintiff's claims regarding hiring and staffing at the detention center, the district court dismissed them outright as having no nexus to plaintiff's injuries. With respect to plaintiff's claims regarding defendant's so-called training program, the district court asserted that plaintiff failed to describe what training should have been provided, how the failure to provide it contributed to plaintiff's injuries, and how such failure constituted deliberate indifference.

Plaintiff respectfully disagrees with the district court's assertion that he failed to adduce evidence of a causal link between the detention center's deficient hiring practices and inadequate training program, and the injuries that he suffered at the hands of other detained youth. (28a-31a) State regulations in effect in 1999 required that child care workers have an Associate's Degree in the social sciences, except that up to 20% of child care staff could consist of individuals who lacked an A.A. if they were of "exceptional ability." (193a) Implicit in this regulation is a finding by state public welfare officials that child care workers needed this minimum amount of academic or prior work experience to effectively carry out their duty under state law to "provide for the care, protection, safety and wholesome mental and physical development" of children in their custody. 42 Pa.C.S.A. § 6301(b)(1.1). Plaintiff offered evidence that a number of child care workers employed during the relevant time period – including defendant Traver, who was

often on duty at times when plaintiff was assaulted by other youth – did not meet even these minimal state standards for job qualifications. *See* (188a) (Traver application); (184a) (Tigue application); (172a) (Gill application); and (180a) (N. Johnson application). *See also* (824a-825a, 847a-848a) (Kwarcinski dep.)[20] Moreover, as plaintiff's corrections expert explained, that the detention center hired child care staff who had neither academic nor employment experience working with troubled youth was particularly problematic given the unrebutted evidence that there was no pre-service training program. (114a) (DeMuro rpt.); (313a) (Parker dep.) [21]

With respect to training, evidence was also presented below that defendants Brulo and Kwarcinski, as detention center administrators, knew or should have known that: (1) small, young, first time detainees were easily victimized by older, bigger and more experienced youth in the population, and that youth accused of sexual assaults were particularly vulnerable in the facility; and (2) a large percentage of youth in the detention center had mental health problems which, if left untreated, could cause problems both for staff management of children, and the children's safety. (242a- 243a) (Brulo 1st dep.); (178a) (Kwarcinski memo): (114a) (DeMuro rpt.) However, staff did not participate in any training – either before or during their employment – with respect to de-escalating conflicts between youth and managing youth behavior generally, dealing with sex offenders, or identifying and protecting youth in the population who would be easily victimized. (280a) (Kwarcinski dep.); (257a) (Considine dep.); (327a-328a) (Prawdzik dep.) Moreover, what training, if any, was offered with regard to managing the behavior of

[20]Employment applications were not produced for at least two other childcare workers – Maureen Yankovich and Lawrence Wesneski – employed at the relevant time.

[21]Staff did receive a one- to three-day orientation, but this was essentially on-the-job training with respect to such issues as building and physical plant, fire safety, and record-keeping. (287a) (Kwarcinski 1st dep.); (227a-228a) (Brulo dep.); (343a- 344a) (Prawdzik dep.); (113a) (DeMuro rpt.)

children with mental health disabilities is clearly a disputed material fact.[22]

In his report submitted to the district court, plaintiff's corrections expert noted that the detention center's training practices deviated from nationally-recognized standards promulgated by the American Correctional Association in 1991. (121a- 123a) These standards called for detention centers to develop both pre-service and in-service training plans that specifically take into account the needs and characteristics of the facility's juvenile population. (122a) (citing ACA standards) According to the expert's unrebutted report, if the child care workers had received appropriate training on how to spot and de-escalate conflict before it became physical, and identify a youth who would be easily victimized by others in the facility, the workers would have likely recognized: (1) a pattern or sequence as to when and how plaintiff was being assaulted, and how they could intervene to disrupt the sequence; and (2) the urgency, given plaintiff's needs and characteristics, for the detention center to develop a safety plan for him (as did Northwestern Academy, plaintiff's next placement after he left the detention center). (116a-117a.) *See also* (107a-109a) (psychiatric expert noting the importance of developing a plan to

[22]There was testimony that while, as a matter of practice, most child care workers took a "first 72 hours" course that included some information on suicide prevention, the administrators imposed no requirement that new hirees take that course at or near the commencement of employment, and sometimes weeks or even months passed before some new employees attended. (290a-292a) *See also* training logs for Traver (144a), Parker (143a), and Considine (145a). Two of the three defendant child care workers took a two-hour course offered by the Children's Service Center, a local mental health provider, in early 1999, (144a) and (145a), but no information was ever produced, despite repeated requests, regarding that training's content.

Indeed, there is a genuine issue of material fact regarding the adequacy of the center's overall training program. Despite repeated demands from plaintiff, defendants never produced any written curricula or materials that described the content of the sundry training that staff attended. (164a) and (167a) Where, as here, it is the sufficiency of the training program that is at issue, and defendants offer no documentary evidence refuting this claim of insufficiency, there remains a genuine issue of material fact with respect to training, and thus summary judgment was inappropriate. *Owens v. Philadelphia*, 6 F. Supp.2d 373, 389-90 (E.D. Pa. 1998).

manage A.M.'s behaviors and minimize his risk of harm by other youth).

Finally, the district court's favorable reference to the many incident reports filed by detention center staff as evidence of their "seeking to protect and deal" (31a) with plaintiff flips the deliberate indifference standard on its head. First, detention center incident reports show that: (a) plaintiff's verbally provocative behavior, a symptom of his untreated mental health disorders, often times instigated the chain of events that would escalate and culminate with plaintiff being physically harmed by other youth; and (b) that certain child care workers were using inappropriate techniques to deal with plaintiff's behavior. *See incident reports cited on page 6, supra.* These incident reports also demonstrate that child care staff would often delay intervening until plaintiff had already suffered harm.[23] Most importantly, despite Brulo's directive that plaintiff be placed on the girls' unit for his protection, (143a), the reports show that plaintiff continued to be placed with other youth in the facility who had previously assaulted and threatened him.

Supreme Court jurisprudence teaches that the likelihood that a situation will recur and the predictability that an individual will suffer harm if a government actor, given his specific duties, is ill-trained, may justify a finding that the government's failure to train amounts to deliberate indifference. *Bd. of County Commissioners of Bryan County v. Brown*, 520 U.S. 397, 409 (1997); *Canton*, 489 U.S. at 390. Here, defendants' own documentation readily demonstrates just how predictable recurrent harm to plaintiff was; defendants' failure to provide training in the

[23]In fact, staff members at Northwestern Academy, the facility to which Plaintiff was transferred on 8/19/99 for his court-ordered disposition, stated that T.M., a youth who had been in detention with Plaintiff and was similarly transferred to Northwestern, confirmed that detention center staff would allow Plaintiff to get beat up because they were sick of him and he "deserved it." (Kahn dep.) (471a-475a)

areas noted by plaintiff's expert, in the context of a summary judgment motion, certainly "may justify a finding that the government's failure to train amounts to deliberate indifference." *Bryan County*, 520 U.S. at 409. "The high degree of predictability may also support *an inference of causation* – that the municipality's indifference led directly to the very consequence that was so predictable." *Bryan County*, 520 U.S. at 409-10 (emphasis added). Plaintiff submits that the predictability of conflict and victimization in a juvenile detention facility and the high percentage of youth in such facilities with mental and behavioral disorders, coupled with the duties of child care workers, supports an inference that the detention center's practices of hiring ill-qualified individuals and not providing them with critical training in a timely manner led, at least in part, to the harm he suffered.

B. Inadequate staff supervision

Plaintiff also disputes the district court's ruling that he failed to show an affirmative link between defendants' staffing practices and plaintiff's injuries. Defendant Traver reported that youth were often left in the care of only one worker while others on duty were either sent on errands away from the facility or to other parts of the building to do maintenance. (177a) (letter); (364a. lines 1-19) (dep.)[24] Other evidence presented below reveals repeated problems that

[24]In assessing causation, the district court further stated that: (1) the relevance of defendant Traver's letter is questionable as it was written two years after the events at issue; and (2) Traver testified that the largest number of children he had to supervise at any given time was ten, and that does not rise to the level of deliberate indifference. (29a.) With respect to the letter, although it was written in 2001, defendant Traver specifically testified that the practices cited therein also existed in 1999, the time of the events at issue. (365a-368a) Moreover, events that are not particularly close in time to those at issue can still be relevant to the question of municipal liability. *See, e.g., Beck v. Pittsburgh*, 89 F.3d 966, 969-70, 972-74 (3d Cir. 1996) (holding that complaints of excessive force over a five-year period, including those filed after the event at issue, could support an inference that municipal officials knew or should have known of officer's misconduct, and reversing trial court's granting of judgment as a matter of law on plaintiff's police brutality claim). And it is for a jury to decide the weight to be accorded an

summer with poor staff supervision of youth. *See, e.g.*, 182a (reprimand of Tigue); (138a) (reprimand of Wesneski). Plaintiff's corrections expert testified that these problems with inadequate youth supervision were one of the numerous deficiencies in practice that "directly contributed to the harsh and abusive treatment A.M. suffered" while incarcerated there. DeMuro rpt. (113a, 115a.) Again, this evidence was unrebutted. *See Hollinger v. Wagner Mining Equipment Co.*, 677 F.2d 402, 405 (3d Cir. 1982) (holding that even when expert report may lack clarity or specificity, when unrebutted it may create a genuine issue of fact and must not be assessed for credibility.)

In their depositions, detention center administrators countered that they provided adequate supervision of youth because they always met state-mandated child care worker-to-youth ratios; however, they further testified that such state requirements were fulfilled if staff simply were physically 'in the building,' rather than when they were directly supervising the children. (249a) (Brulo dep.) This contention defies common sense, as staff positioned away from the residents are plainly incapable of providing supervision or care to the residents. Plaintiff submits that defendants' assertion of adequate supervision by the detention center's alleged compliance with state-mandated staffing ratios is insufficient at the summary judgment stage to overcome the other evidence presented of poor staff supervision.

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individual piece of evidence. *Bushman v. Halm*, 798 F.2d 651, 660-662 (3d Cir. 1986.)

Regarding the district court's assertion that allowing ten youth in detention to be supervised by a single individual does not constitute deliberate indifference, the district court offers no basis for this conclusion.

C. Lack of policies or procedures to ensure youth safety

The district court's summary treatment and analysis of plaintiff's challenge to defendants' lack of any protocol for ensuring youth safety not only ignores the vast majority of evidence plaintiff submitted in support of this claim, it also fails to acknowledge the applicable law. Plaintiff vigorously disagrees with the district court's finding that he did not present any evidence of a causal link between the lack of written policy or procedure for detention center operations, and the harms he suffered, as well as the district court's assertion that the crux of plaintiff's argument on this issue was that the lack of a written protocol *per se* constituted deliberate indifference. (31a) Instead, as demonstrated *infra*, plaintiff presented sufficient evidence from which a reasonable jury could infer that the detention center's lack of established procedure in key areas may have "reasonably probably" or "at least in part" caused plaintiff's injuries. *Bielevicz*, 915 F.2d at 851.

First, the record below shows that: (1) detention administrators gave the child care staff contradictory orders with regard to where and with whom plaintiff should be placed within the facility, as evidenced by a memo and a boys' unit log entry both written on 7/28/99, *see page 8 supra*; (2) child care workers were failing to properly segregate plaintiff, as demonstrated by a number of incident reports and log entries after 7/28/99 (the date of the administrators' conflicting instructions as to A.M.) that indicate that plaintiff was, in fact, placed with other boys who had assaulted and threatened him, *see incident reports cited at p. 6 supra*; and (3) supervisors never communicated any information to child care staff about Plaintiff's special needs. (360a- 363a) (Traver dep.)[25]

[25]There were no log entries about plaintiff's mental health history. If such information had been communicated to the child care workers, it was expected that they would have recorded it in the

Second, plaintiff adduced evidence that the detention center had no written policy or procedure in certain key areas, i.e., who is responsible for reviewing and following up of incident reports, what child care workers should do when they receive contradictory instructions from superiors, and who was responsible for communicating information about a youth's special needs to child care workers. For example, the detention center's policy, or lack thereof, for protecting the confidentiality of youth's records, put children like A.M. at even greater risk for harm. Staff testified that records that included notations of the youths' alleged offenses were kept in an unlocked desk drawer on the boys' unit. (317a-320a) (Parker dep.) This was a particularly dangerous practice for youth, like Plaintiff, who are charged with sexual assaults and thus often targeted for abuse. (114a) (DeMuro rpt.)

Moreover, there is a genuine issue of material fact as to whether there was any procedure in place – written or otherwise -- for review and follow up of incident reports and log entries by child care staff. According to Brulo and Kwarcinski, Jerome Prawdzik, the detention supervisor, would receive and review all incident reports on a daily basis and then pass them up the chain of command. (286a, 302a) (Kwarcinski dep.); (250a) (Brulo dep.) Prawdzik was to investigate the reports when warranted, and then give feedback to child care workers. (295a, 303a-304a) (Kwarcinski dep.); (236a-237a) (Brulo dep.) Prawdzik also was expected to review unit logs every day, (259a-260a) (Brulo dep.), and attend shift change meetings with the child care workers. (281a-282a) (Kwarcinski dep.) Prawdzik, by contrast, testified that incident reports

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unit logs. (409a-412a) (Yozviak dep.) Defendant Brulo doesn't recall ever meeting with plaintiff herself to discuss the situation. (236a, 279a-280a) Moreover, neither the detention supervisor nor the nurse recall having any meetings to discuss how to better manage plaintiff's behavior, and the nurse does not recall seeing any memos. (333a and 336a) (Prawdzik dep.); (419a-420a) (Yozviak dep.)

would first go to Kwarcinski and then Kwarcinski would pass along to Prawdzik those that he thought Prawdzik should see. (341a-342a) Brulo and Kwarcinski, according to Prawdzik, were responsible for deciding what course of action should be taken in response to the incident reports. (343a) Moreover, Prawdzik said he only occasionally read the unit logs, (345a-346a) and stated unambiguously that he did not attend change of shift meetings. (343a)[26]

The district court's ruling that the "evidence does not suggest a direct causal link between the non-review of any incident report and plaintiff's injuries" (31a) is squarely at odds with the uncontroverted opinion testimony of plaintiff's expert. Plaintiff's corrections expert stated in his report that a lack of written policy in these key areas was a deficiency that contributed to the abuse that plaintiff experienced in detention. (113a, 115a, 116a.) And it does not take a corrections expert to figure out that a written policy that clarified roles and responsibilities would at least have minimized the chance that plaintiff was inappropriately placed with youth who had previously assaulted or threatened him. For example, if a supervisor had been regularly reviewing the incident reports and unit logs, it would have been readily apparent that plaintiff was not being appropriately segregated from other youth who had previously hurt him. But the detention center had no generally understood protocol that directed a supervisor to regularly read

[26]Indeed, defendants were actually unable to produce written policies and procedures in effect at the detention center during the summer of 1999. While defendants produced a sheaf of unattached memos purporting to represent the current "policy manual," *see* (225a-226a) (Brulo dep.); (164a) (letter to defendants' counsel), defendant Brulo asserted that all copies of the prior policy manual that was in effect in the summer of 1999 had been disposed of. (224a-225a) (Brulo dep.) Yet several defendants testified either that they did not recall there being in 1999 written policy or procedures with respect to certain key areas affecting youth safety, including how to manage problematic youth behavior, de-escalate conflicts or respond to physical altercations, or identify and protect at-risk children, or that there, in fact, wasn't any written policy at all on these subjects. (316a, 321a) (Parker dep.); (353a-354a) (Considine dep.); (360a) (Traver dep.); (289a) (Kwarcinski dep.); (329a-332a) Prawdzik dep.; and (381a) (Puffenberger dep.)

these reports and logs, much less follow up with staff about what was written there. Whatever protocol it had is at best in dispute, and at worst not followed. Similarly, if child care workers knew, as the administrators and medical staff did, of plaintiff's mental health history and why he was at particular risk for victimization, *see p. 5-7 supra*, they would have understood the need to keep plaintiff away from certain youth and to seek clarification from their supervisors about their conflicting housing instructions with regard to plaintiff. But, again, the detention center had no protocol that specified when, how and by whom such information was to be communicated. A juror could reasonably conclude that the lack of policy in this area was a contributing factor to plaintiff's repeated placement with, and abuse by, certain youth within the facility.

D. Lack of policies or procedures to address the physical and mental health needs of youth

Plaintiff disagrees with the district court's assertion that plaintiff failed to provide sufficient evidence that the detention center's policies or customs actually caused the harm to plaintiff, in the context of a summary judgment motion.

Plaintiff's corrections expert offered unrebutted testimony that, in his opinion, a number of policies and practices at the Detention center directly contributed to the harm plaintiff suffered. First, the detention center had a "seriously flawed intake/assessment" system that failed to provide for the sharing and dissemination of critical information about A.M.'s extensive mental health history. (114a) Whether or not defendant Brulo ever contacted plaintiff's treating psychiatrist is plainly in dispute, as defendant's evidence of such contact is dated two years after plaintiff left the facility. (134a, 133a) In any event, plaintiff was not examined by any psychiatrist until 11 days after his admission. (150a) (psychiatric evaluation)

The corrections expert also cited the detention center's "diffuse accountability and poor staff communication, particularly concerning the medical and mental health needs of youth," as contributing to the ongoing abuse experienced by plaintiff. (115a) Deposition testimony highlighted that despite Brulo's claims, the center completely failed to establish a medical plan structured to address the health care needs as required by law. (543a-544a) (Brulo dep.), *but see* (375a, 393a, 912a. 937a, 905a-906a, 976a) (Puffenburger dep.) There was no protocol (written or otherwise) that addressed under what circumstances a resident's treating psychiatrist was to be contacted, what follow-up if any was to be done once a resident received a mental health evaluation, nor who was responsible for communicating information about a particular youth's mental health problems and needs to line staff. (115a-116a) (DeMuro rpt.) Thus, while Dr. Gitlin's report did make a number of specific written recommendations for managing plaintiff's mental health problems and behavior, (153a), there is no evidence in the record that defendant administrators or Dr. Puffenberger read these recommendations or shared them with line staff to ensure their implementation. (929a-930a, 370a-371a) (Puffenberger dep.) *but see* 256a, lines- 1-18 (Brulo dep.)

Plaintiff's psychiatric expert further submitted unrebutted testimony that explained "the impact of the failure of authorities to properly treat and provide appropriate environmental and behavioral management of [A.M.]"s chronic emotional disturbance, and its relevance to his peer interactions and functioning..." (92a) (Steinberg rpt.) As Dr. Steinberg stated. *see* 106a-109a:

> Based on the information gathered in this evaluation, the staff of Luzerne Juvenile Detention center did not provide appropriate treatment for [A.M.]'s pre-existing mental health condition while he was a resident at the facility, worsening his pre-existing mental illness. Staff did not pursue additional baseline data at admission by establishing contact with treating physicians and agencies. They did not appear

> to understand the implications of [A.M.]'s condition for the juvenile detention setting. Inferences about Anthony's cognitive and moral maturity delays might have been recognized but were not. Staff did not seek consultation to train staff, monitor or recognize the exacerbation of psychiatric symptoms, warning signs and the need for modifications to the intervention, or demonstrate the fundamental principles relevant to the care of juveniles. The failure to recognize and address Anthony's neuropsychiatric condition falls significantly below the standard of care for juvenile detention for a youth with a chronic and unremitting, serious emotional disturbance.
>
> The staff ... did not protect [A.M.] from harm while he was a resident at the facility. His placement at Luzerne should have included an assessment of his chronic and persistent mental illness and the significant risk and vulnerability with which he presented. This should have been accompanied by a plan to manage his behaviors that were out of his control, as well as the behaviors of other juveniles in the facility.
>
> ********
>
> [A.M.]'s high risk profile should have led to management strategies that assured his safety; staff should have been educated so that they could address his overwhelming anxiety and minimize the trauma of detention and behavioral acting out in his interim stay at Luzerne; these management strategies are widely available in the general literature on juvenile detention. It is not clear why the psychiatrist's [Dr. Gitlin] recognition of [A.M.]'s needs and potential risk in terms of danger to himself and to his community of juvenile offenders were not integrated into a plan for safety. In fact, interventions with [A.M.] show little evidence of individualized assessment or behavioral modifications, even as his behavior declined...

This court has held that psychiatric care at jails must meet the constitutional demand that inmates with serious mental or emotional illnesses be provided with reasonable access to medical personnel qualified to diagnose and treat them. *See Inmates of Allegheny County Jail v. Pierce*, 612 F.2d 754, 762-764 (3d Cir. 1979). Children in state care have a constitutional right to appropriate medical care. *See Deshaney*, 489 U.S. at 199, *Nelson v. Heyne*, 491 F.2d 352, 360 (7th Cir. 1974) (Holding that children taken from their parents custody and placed in a training school must be given appropriate, individualized medical treatment); *Doe v. New York City Dep't*

of Social Servs., 709 F.2d 782, 790 (2d Cir. 1983) (children are entitled to considerate medical treatment when removed from their parents' care.) Evidence that defendants never read, much less adopted, the recommendations of their own mental health professional: of post-dated notes to contact plaintiff's treating psychiatrist; of defendants' collective failure to recognize illness-related behavior; and defendants' overall indifference to plaintiff's declining mental health status as reflected in comments expressing only annoyance, rather than concern, all highlight how plaintiff's needs were completely ignored. *See, e.g.*, (309a-310a) (Kwarzinski dep.)

In addressing - and dismissing – these persistent failings, the district court ignores Fourteenth Amendment precedent entirely, relying once again on Eighth Amendment adult prisoner cases. While the Eighth Amendment may have some bearing on assessing Fourteenth Amendment medical claims of pre-trial adult prisoners, this court has explicitly stated that to look to the Eighth Amendment for guidance on claims of the mentally retarded would be "little short of barbarous." *Boring v. Kozakiewicz*, 833 F.2d 468, 472 (3d Cir. 1987). Looking to the Eighth Amendment in the case of a pre-sentenced juvenile is no less "barbarous." The Pennsylvania Juvenile Act, which governed A.M.'s placement, recognizes that the aim of the juvenile justice system is not only to protect society, but to provide for the treatment and care of at-risk youth in order to facilitate "the development of competencies to enable children to become responsible and protective members of the community." 42 Pa. S. C. § 6301 (2) & (3). Conduct amounting to a failure to protect from harm and to provide necessary services in the Fourteenth Amendment context rises to the level of deliberate indifference for the purposes of a § 1983 claim precisely in those circumstances when a defendant specifically knew of or should have known of the harm to the plaintiff before it was manifested. *See Shaw v. Strackhouse*, 920

F.2d 1135 (3d Cir. 1990). Plaintiff's unrebutted expert testimony demonstrates that his previously diagnosed mental health conditions, combined with the circumstances surrounding confinement, created the direct harm that led to plaintiff's repeated physical and psychological injuries; a harm known to and susceptible to correction by the defendants. *See* (103a- 109a) (Steinberg rpt.) (outlining how A.M.'s mental health problems signaled a significant risk that he would be harmed if not properly cared for); (114a-123a) (Demuro rpt.) (explaining how A.M.'s clear risk of harm should have been addressed by detention center practice).

II. THE DISTRICT COURT'S GRANT OF SUMMARY JUDGMENT TO DEFENDANTS PUFFENBERGER AND YOZVIAK MUST BE REVERSED

Plaintiff sued Dr. Puffenberger in his official and individual capacity for failure to treat plaintiff and provide appropriate medical services. Dr. Puffenberger was the only physician on contract at the detention center, and, accordingly, was responsible for providing for the general health needs of all of the youth at the center, as required by Pennsylvania law. *See* (176a) (Puffenberger Contract) (explicitly incorporating the regulations guiding medical care and planning at youth facilities); 211a, 213a (Brulo dep.); 179a (55 Pa. Code § 3760.31). Despite Dr. Puffenberger's denial, the district court, as required by summary judgment standards, assumed that Dr. Puffenberger was responsible for formulating health care policy along with defendant Brulo. (37a) However, the court then dismissed the official capacity claims against Puffenberger, ruling that the failure to provide A.M. with mental health services, "does not rise to the level of deliberate indifference, and in any case no injury resulting from any lack of adequate mental health care has been established in evidence." (37a)

Plaintiff submits to the contrary that the *documented* failure to plan and provide for the

health care needs of the youth in the center, in direct violation of binding regulations, may strike a reasonable jury as so deliberately indifferent to the needs of A.M., as to warrant relief. Given that A.M. was not a sentenced inmate subject to state punishment, but, rather, a young child placed in the facility pursuant to Pennsylvania's Juvenile Act, the scope of his liberty right must be evaluated through Fourteenth Amendment jurisprudence. *See Ingraham*, 430 U.S. at 671-672 n. 40; *Bell*, 441 U.S. at 535 (1979) ("Under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law.") The district court articulated the general standard of review that, in order to survive summary judgment, A.M. was obligated to show that when the facts are considered in the light most favorable to his claim, the action or inaction of the defendants constituted deliberate indifference to his rights to the extent that it "shocks the conscience." *Lewis*, 523 U.S. at 846; *Ziccardi*, 288 F.3d at 64-66. However, in addressing the lack of health care service available, the court completely disregarded that the "exact degree of wrongfulness necessary to reach the 'conscious- shocking' level depends upon the circumstances of a particular case." *Miller*, 174 F.3d at 375); *see also Nicini*, 212 F.3d 798 at 810 ("a Plaintiff seeking to establish a constitutional violation must demonstrate that the official's conduct 'shocks the conscience' in the particular setting in which that conduct occurred.")

Dr. Puffenberger, the only licensed medical professional on the staff, entirely failed his statutory – and constitutional – obligation to ensure the availability of adequate medical and mental health services. (375a, 385a, 389a) (Puffenberger dep.) He testified that he was not aware if there was a mental health professional on staff to address any referral for such services. (375a, 384a, 395a), guessing that Dr. Feussner of the Children's Service Center was on contract

when he in fact was not. (370a-371a), *but see* 256a (Brulo dep.). He never established a protocol for the nurse to follow in acting upon orders or identifying sick children. (378a) He acknowledged he never read the regulations requiring medical planning, made no provision for mental health treatment or referral, (375a-376a), and never read or reviewed the orders of other doctors that had contact with the children. (384a) This complete abdication and denial of responsibility by Dr. Puufenberger, despite his professional knowledge, may well be found to be deliberately indifferent, either under the appropriate 14th Amendment standard, or the more restrictive Eighth Amendment standard articulated in *Estelle v Gamble*, 429 U.S. 97 (1976.)

Moreover, the district court's finding that A.M. failed to present evidence that demonstrates that the lack of an adequate health care plan led to plaintiff's injury is again in direct contrast to the expert reports that were before the court. *See* 106a-109a (Steinberg rpt.); 113a-118a (Demuro rpt.). Had proper medical intervention and planning occurred, plaintiff's experts both assert that plaintiff may never have suffered the long-term consequences that resulted from his detention experience. *See* 112a-123a (Demuro rpt.) For the purposes of summary judgment, this unrebutted expert testimony establishes a sufficient causal link between defendants' actions, or inactions, and plaintiff's alleged harms to deny defendants relief at this stage.

In dismissing the count against Dr. Puffenberger in his individual capacity, the district court appears to simply disregard the expert reports presented by A.M., dismissing them as "speculation." (41a). The role of the expert in litigation is to reach conclusions based upon the evidence as viewed by their area of expertise. The qualifications of Dr. Steinberg and Paul Demuro to evaluate and provide their expert opinions on the treatment, or lack thereof, received

by A.M. are clear. *See* 109a (Steinberg rpt.), 110a-111a (Demuro rpt.) The trial court is not permitted to simply disregard those uncontroverted opinions, reached to a degree of professional certainty by qualified experts, upon an assertion that they are speculative. Both the reports of Dr. Steinberg and Paul Demuro establish the basis for their conclusions that the denial of treatment led to the harm suffered. (106a-109a) and (110a-123a) Accordingly, the jury must be allowed to assess the credibility of the experts and to assign weight to their opinions based upon that assessment. *See Hollinger*, 667 F.2d at 405.

The district court further ruled that A.M. failed to demonstrate that Puffenberger's conduct "deprived the Plaintiff of adequate medical care despite (his) knowledge of a substantial risk of harm." The court describes Puffenberger's conduct as potentially negligent, but without "subjective culpability." Providing no legal support for its conclusion, the court appears to be assessing the credibility of the evidence, weighing the evidence, and coming to its own "verdict." These functions all violate the clear province of the jury. The expert reports of Steinberg and Demuro both provide that a failure to address A.M.'s medical needs, given his psychiatric history that was know to Dr. Puffenberger, fell outside of professional standards and placed him in significant danger of victimization. (107a-109a) (Steinberg rpt.): (114a-118a, 122a-123a) (DeMuro rpt.) Both experts assert, based on their professional knowledge, and the knowledge Puffenberger should be expected to possess given his education and position at the center, that failure to treat A.M. created a substantial risk that he would be seriously injured, both physically and emotionally. Dr. Steinberg's report further establishes that serious emotional harm did in fact occur, harm that was caused in part by the inaction of Puffenburger. (107a-108a) Accordingly, the district court's summary dismissal of this claim was without support in either law or fact.

III. THIS COURT MUST REVERSE THE LOWER COURT'S GRANT OF SUMMARY JUDGMENT TO THE CHILD CARE WORKERS AND THEIR SUPERVISOR, BECAUSE THE LOWER COURT APPLIED THE INCORRECT STANDARD IN ASSESSING THEIR INDIVIDUAL CONDUCT

The lower court dismissed A.M.'s claim that the child care workers (defendants Traver. Parker and Considine) and their immediate supervisor (defendant Prawdzik) repeatedly failed to protect A.M. from the recurring harm inflicted on him by other youth throughout his five-week detention. In reaching this ruling, the lower court incorrectly relied on the standard for assessing claims of excessive use of force by prison officials in prison disturbance cases, as articulated by this Court in *Fuentes v. Wagner*, 206 F.3d 335, 345 (3d Cir. 2000). Specifically, the lower court held that the evidence presented by A.M. did not overcome the threshold inquiry, i.e., that the child care workers and their immediate supervisor acted "maliciously and sadistically to cause harm." (39a) (citing Fuentes, 206 F.3d at 345). But it is important to note that in *Fuentes*, this Court applied the "malicious and sadistic" standard to assess the use of force by prison officials in a single instance of prisoner unrest. *Fuentes*, 206 F3d at 346-48. Such deference is accorded prison official's use of force against an inmate in an isolated instance because of the need to act quickly in the heat of the moment to prevent the situation from escalating and threatening the safety of others. *Hudson v. McMillan*, 503 U.S. 1, 5 (1992). And, indeed, if A.M. had alleged that these officials themselves had harmed him on a single occasion, it may have been appropriate to apply the "malicious and sadistic" standard to determine their culpability.

However, these are the not the facts of the instant case. As described in detail in the Statement of Facts, the evidence below showed that A.M. was assaulted by other youth on a number of occasions over a five-week period, many times in the presence of child care workers.

While it may be appropriate to use a standard as deferential as the "malicious and sadistic" test to assess the actions of the child care workers and their immediate supervisor the first time A.M. was beat up, or even the second, it is legally and factually absurd to suggest that this deference should extend to what became almost daily altercations between plaintiff and other residents. Indeed, the simultaneous documenting of these attacks by child care workers in incident reports and unit logs, *see p. 6 supra*, make clear the staff had ample opportunity over the course of time to see the pattern emerging, consult amongst themselves and with their supervisors, and come up with a safety plan for A.M.. As such, the acts and omissions of the detention staff over an extended period of time are more appropriately judged by the deliberate indifference standard applied in conditions of confinement cases, when state actors are not required to make a split-second decision in a single instance. *See Schieber*, 320 F.3d at 418-19 (citing *Lewis*, 523 U.S. at 851-53) and 422-23 (citing *Miller*, 174 F.3d at 375 and *Ziccardi*, 288 F.3d at 66).

And, in fact, a number of federal courts have held in the Eighth Amendment context that the failure of prison officials to protect an inmate from an attack by another inmate should be judged by a deliberate indifference standard. *See Jeffers v. Gomez*, 267 F.3d 895, 911-912 (9th Cir. 2001); *Walker v. Norris*, 917 F.2d 1449, 1453-54 (6th Cir. 1990); *Winfield v. Bass*, 106 F.3d 525, 530 (4th Cir. 1997); *Gibbs v. Franklin*, 49 F.3d 1206, 1207-1208 (7th Cir. 1995); *Williams v. Mueller*, 13 F.3d 1214, 1216 (8th Cir. 1994); *Brown v. Hughes*, 894 F.2d 1533, 1537 (11th Cir. 1990). *See also Moon v. Dragovich*, 1997 WL 180333 *4 n.3 (E. D. Pa. 1997). Plaintiff is not aware of a decision of this Court that directly speaks to the standard by which to judge the culpability of detention center staff who fail to intervene when a youth is being repeatedly assaulted by other youth over an extended time period. However, this Court's holding in *Smith v.*

Mensinger, 293 F.3d 641, 650 (3d Cir. 2002) – an Eighth Amendment case that examined both the liability of an officer who beat an inmate, as well as the liability of the officer who failed to intervene in the beating – is instructive. In *Mensinger*, this Court applied the "malicious and sadistic" standard to determine the culpability of the officer who administered the beating. *Id.* at 649-650. By contrast, this Court held that a second officer who witnessed but failed to intervene in the beating administered by the first officer is culpable if that second officer had a "reasonable opportunity" to intervene but refused to do so. *Id.* at 650-651. *Mensinger* further supports Plaintiff's contention that the lower court erred when it ruled that because the child care workers and their immediate supervisors did not act "maliciously and sadistically to cause harm" they had not violated A.M.'s substantive due process rights.

CONCLUSION

For the reasons set forth above, plaintiff respectfully requests that this Court reverse the district court's grant of summary judgment to defendants on plaintiff's federal law claims, and remand this case to the district court for further proceedings.

Respectfully submitted,

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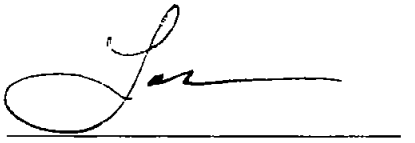
COUNSEL FOR THE APPELLANT

Dated: October 14, 2000

CERTIFICATE OF COMPLIANCE

I, Lourdes M. Rosado, certify that the foregoing brief for the Appellant meets the type-volume limitations of Fed. R. App. P. 32(a)(7). The number of words in the brief is 13,543. including text and footnotes.



Lourdes M. Rosado

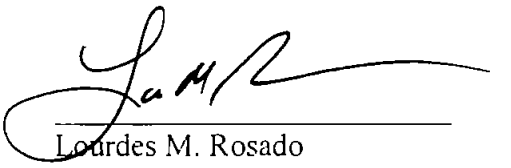
CERTIFICATE OF BAR MEMBERSHIP

I, Marsha L. Levick, hereby certify that I am a member in good standing of the Bar of this Court.

Marsha L. Levick

CERTIFICATE OF BAR MEMBERSHIP

I, Lourdes M. Rosado, hereby certify that I am a member in good standing of the Bar of this Court.



Lourdes M. Rosado

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

APPELLATE DOCKET NO. 03-3075

A.M., by and through his next friend and mother, J.M.K.,

APPELLANTS

v.

LUZERNE COUNTY JUVENILE DETENTION CENTER, a department of Luzerne County, Pennsylvania; SANDRA M. BRULO, individually and in her official capacity as chief administrator of the Luzerne County Juvenile Detention Center; LOUIS P. KWARCINSKI, individually and in his official capacity as deputy chief probation officer in charge of the Luzerne County Juvenile Detention Center; JEROME PRAWDZIK, in his individual capacity; CHRISTOPHER TRAVER, in his individual capacity; CHRISTOPHER PARKER, in his individual capacity; MICHAEL CONSIDINE, in his individual capacity; MARK PUFFENBERGER, M.D., in his official and individual capacity; ELAINE YOZVIAK, R.N., in her individual capacity,

APPELLEES

Appeal from the Order of the United States District Court
For the Middle District of Pennsylvania
Entered June 30, 2003 in Civil Action No. 3:01-CV-1276

JOINT APPENDIX OF THE PARTIES
VOLUME I OF II
Pages 1a-43a

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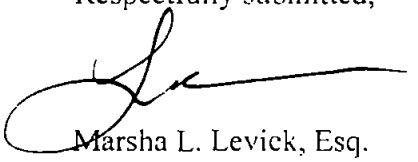
Relevant Portions of the Record
(Bound as separate volume)

Additional Exhibits Submitted to District Court by Defendants Luzerne County Juvenile Detention Center, Brulo, Kwarcinski, Prawdzik, Traver, Parker, Considine and Yozviak in Support of Their Motion for Summary Judgment ("Defs. Ex. __") as follows:

Additional Exhibits Submitted to District Court by Defendant Puffenberger in Support of His Motion for Summary Judgment ("Def. Puffenberger Ex. ")

Respectfully submitted,



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DATED: October 14, 2003

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

File Number 3:01-CV-1276

A.M., by and through his next friend and mother, J.M.K.
Plaintiff
v.

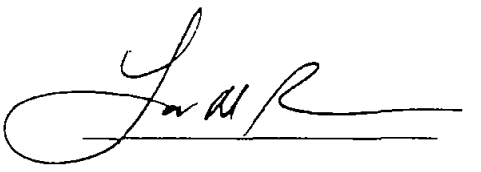
LUZERNE COUNTY JUVENILE DETENTION CENTER, a department of Luzerne County, Pennsylvania; SANDRA M. BRULO, individually and in her official capacity as chief administrator of the Luzerne County Juvenile Detention Center; LOUIS P. KWARCINSKI, individually and in his official capacity as deputy chief probation officer in charge of the Luzerne County Juvenile Detention Center; JEROME PRAWDZIK, in his individual capacity; CHRISTOPHER TRAVER, in his individual capacity; CHRISTOPHER PARKER, in his individual capacity; MICHAEL CONSIDINE, in his individual capacity; MARK PUFFENBERGER, M.D., in his official and individual capacity; ELAINE YOZVIAK, R.N., in her individual capacity,

Defendants.

NOTICE OF APPEAL

NOTICE OF APPEAL

Notice is hereby given that Plaintiff A.M., by and through his next friend and mother, J.M.K., hereby appeals to the United States Court of Appeals for the Third Circuit from the decision of this court entered in the above captioned proceeding on June 30, 2003 granting summary judgment to all defendants on the federal claims and dismissing the pendant state claims for lack of subject matter jurisdiction.



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CERTIFICATE OF SERVICE

I hereby certify that I am, this 14th day of July, 2003, serving this Notice of Appeal upon the persons indicated below and in the manners indicated below:

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U.S. District Court
Middle District of Pennsylvania (Scranton)
CIVIL DOCKET FOR CASE #: 3:01-cv-01276-ARC

A.M. v. Luzerne County Juven, et al
Assigned to: Judge A. Richard Caputo
Referred to:
Demand: $0
Lead Docket: None
Related Cases: None
Case in other court: None
Cause: 42:1983 Civil Rights Act

Date Filed: 07/10/01
Jury Demand: Both
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

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John Doe Levin *TERMINATED: 02/21/2003*	represented by	**Sean P. McDonough** (See above for address) *TERMINATED: 02/21/2003* *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*
John Doe, #		
John Doe, # *TERMINATED: 09/26/2001*		
John Doe, # *TERMINATED: 09/26/2001*		
John Doe, # *TERMINATED: 02/21/2003*		
Elaine Yozinak, ***in her individual capacity.*** *TERMINATED: 09/26/2001*		
John Doe, # *TERMINATED: 02/21/2003*		
John Doe, #		
Elaine Yozviak, R.N., ***In her individual capacity*** *TERMINATED: 06/30/2003*	represented by	**Sean P. McDonough** (See above for address) *ATTORNEY TO BE NOTICED*
Christopher Traver, ***in his individual capacity*** *TERMINATED: 06/30/2003*	represented by	**Sean P. McDonough** (See above for address) *LEAD ATTORNEY*

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ATTORNEY TO BE NOTICED

Mark Puffenberger, M.D., *in his official capacity*
TERMINATED: 06/30/2003

represented by **James A. Doherty, Jr.**
Scanlon, Howley, Scanlon & Doherty
1000 Bank Towers
321 Spruce Street
Scranton, PA 18503
717-346-7651
Email: jadoherty3@aol.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Christopher Parker
TERMINATED: 06/30/2003

represented by **Sean P. McDonough**
(See above for address)
ATTORNEY TO BE NOTICED

Michael Considine
TERMINATED: 06/30/2003

represented by **Sean P. McDonough**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jerome Prawdzik
TERMINATED: 06/30/2003

represented by **Sean P. McDonough**
(See above for address)
ATTORNEY TO BE NOTICED

Filing Date	#	Docket Text
07/10/2001	1	COMPLAINT - pltf alleges civil rights violations. Receipt #: 333 Amt: 333 84344 (rm) (Entered: 07/11/2001)
07/10/2001		SUMMONS ISSUED as to defendant Luzerne County Juven, defendant Sandra Brulo, defendant Louis P. Kwarcinski, defendant Robert A. Roman, defendant Steve Adamchak, defendant John Doe Levin, defendant John Doe #1, defendant John Doe #2, defendant John Doe #3, defendant John Doe #4, defendant Elaine Yozinak (rm) (Entered: 07/11/2001)
07/17/2001	2	ORDER by Judge A. R. Caputo - RE: Assignment to case and outlining procedures. (cc: all counsel court) (ao) (Entered: 07/17/2001)
08/02/2001	3	PRAECIPE FOR ENTRY OF ATTORNEY APPEARANCE for Dfts. Luzerne County Juvenile Detention Center, Sandra Brulo, Louis P. Kwarcinski, Robert A. Roman, Steve Adamchak, John Doe Levin by atty Sean P. McDonough; C/S. (vg) (Entered: 08/06/2001)
08/02/2001	4	MOTION by Dfts. Luzerne County Juvenile Detention Center, Sandra Brulo, Louis P. Kwarcinski, Robert A. Roman, Steve

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		Adamchak, John Doe Levin to extend time to answer until 9/1/01 to plead to pltf's complt. ; Cert. of Conc.; C/S; Propo. (vg) (Entered: 08/06/2001)
08/06/2001	5	RETURN OF SERVICE executed upon defendant John Doe #1 a/k/a Big Chris 7/26/01 (ts) (Entered: 08/09/2001)
08/06/2001	6	RETURN OF SERVICE executed upon defendant John Doe #4 a/k/a Dr. Mark Pufferberger 7/26/01 (ts) (Entered: 08/09/2001)
08/06/2001	7	RETURN OF SERVICE executed upon defendant Elaine Yozinak 7/19/01 (ts) (Entered: 08/09/2001)
08/06/2001	8	RETURN OF SERVICE executed upon defendant Robert A. Roman 7/18/01 (ts) (Entered: 08/09/2001)
08/06/2001	9	RETURN OF SERVICE executed upon defendant Luzerne County Juven 7/16/01 (ts) (Entered: 08/09/2001)
08/06/2001	10	RETURN OF SERVICE executed upon defendant Sandra Brulo 7/16/01 (ts) (Entered: 08/09/2001)
08/06/2001	11	RETURN OF SERVICE executed upon defendant Louis P. Kwarcinski 7/16/01 (ts) (Entered: 08/09/2001)
08/06/2001	12	RETURN OF SERVICE executed upon defendant Steve Adamchak 7/16/01 (ts) (Entered: 08/09/2001)
08/06/2001	13	RETURN OF SERVICE executed upon defendant John Doe Levin 7/16/01 [served Sandra M. Brulo] (ts) (Entered: 08/09/2001)
08/06/2001	14	RETURN OF SERVICE executed upon defendant John Doe #2 7/16/01 (ts) (Entered: 08/09/2001)
08/06/2001	15	RETURN OF SERVICE executed upon defendant John Doe #3 a/k/a Mike by serving Sandra M. Brulo 7/16/01 (ts) (Entered: 08/09/2001)
08/09/2001		ATTORNEY SPECIAL ADMISSION form received from: Marsha L. Levick, Esq. forwarded to judge Caputo for approval. Receipt #: 333 84727 Amt: $25.00 (ao) (Entered: 08/10/2001)
08/09/2001		ATTORNEY SPECIAL ADMISSION form received from: Lourdes M. Rosado, Esq. forwarded to judge Caputo for approval. Receipt #: 333 84728 Amt: $25.00 (ao) (Entered: 08/10/2001)
08/20/2001	16	REQUEST OF ATTORNEY FOR SPECIAL ADMISSION to

		practice on behalf of A.M. by Marsha Levick approved by court (sm) (Entered: 08/20/2001)
08/20/2001	17	REQUEST OF ATTORNEY FOR SPECIAL ADMISSION to practice on behalf of A.M. by Lourdes Rosado approved by court (sm) (Entered: 08/20/2001)
08/22/2001	18	ORDER by Judge A. R. Caputo granting motion to extend time to answer until 9/1/01 to plead to pltf's complt. [4-1] (cc: all counsel court) (sm) (Entered: 08/22/2001)
09/06/2001	19	MOTION by defendant Luzerne County Juven. defendant Sandra Brulo, defendant Louis P. Kwarcinski, defendant Robert A. Roman. defendant Steve Adamchak, defendant John Doe Levin to extend time to 9/6/01 to file their answer w/COS (hm) (Entered: 09/07/2001)
09/06/2001	20	ANSWER by defendant Sandra Brulo, defendant Louis P. Kwarcinski, defendant Robert A. Roman. defendant Steve Adamchak. defendant John Doe Levin. defendant Elaine Yozinak w/COS; jury demand (hm) (Entered: 09/07/2001)
09/17/2001	21	CERTIFICATE of CONCURRENCE re motion for extension of time. (seal) (Entered: 09/19/2001)
09/17/2001	22	MOTION by defendants Luzerne County Juven, defendant Sandra Brulo. defendant Louis P. Kwarcinski, defendant Robert A. Roman. defendant Steve Adamchak. defendant John Doe Levin. defendant John Doe #1, defendant Elaine Yozinak to amend caption of their anser and amend the answer Cert Conc. (sm) (Entered: 09/19/2001)
09/24/2001	23	MOTION by plaintiff A.M. to amend the complaint w/exhibits A & B; c/s. (kn) (Entered: 09/25/2001)
09/24/2001		PROPOSED AMENDED COMPLAINT submitted by plaintiff A.M. (kn) (Entered: 09/25/2001)
09/26/2001	24	ORDER by Judge A. R. Caputo granting plaintiff's motion to amend the complaint [23-1] (cc: all counsel court) (kn) (Entered: 09/26/2001)
09/26/2001	25	AMENDED complaint filed by plaintiff; jury demand; c/s. (kn) (Entered: 09/26/2001)
09/28/2001	26	ORDER by Judge A. R. Caputo granting motion to amend caption of their anser and amend the answer [22-1] (cc: counsel court) (ts) (Entered: 09/28/2001)

09/28/2001	27	ORDER by Judge A. R. Caputo granting motion to extend time to 9/6/01 to file their answer [19-1] (cc: all court) (ts) (Entered: 09/28/2001)
10/17/2001		SUMMONS ISSUED as to defendants Christopher Traver and Mark Puffenberger M.D. (previously listed as John Does) and sent to counsel to serve with the amended complaint. (kn) (Entered: 10/17/2001)
11/06/2001	28	ENTRY OF ATTORNEY APPEARANCE for defendant Mark Puffenberger M.D. by atty James A. Doherty Jr. (hm) (Entered: 11/06/2001)
11/06/2001	29	MOTION by defendant Mark Puffenberger M.D. to extend time to respond to plaintiff's amended complaint (hm) (Entered: 11/06/2001)
11/06/2001	30	CERTIFICATE OF SERVICE by James Howley, attorney for defendant Mark Puffenberger M.D. of Praecipe for Appearance and Motion for Extension of Time to Respond to Amended Complaint (hm) Modified on 11/13/2001 (Entered: 11/06/2001)
11/13/2001	31	RETURN OF SERVICE executed upon defendant Mark Puffenberger M.D. on 10/31/01 (hm) (Entered: 11/13/2001)
11/13/2001	32	RETURN OF SERVICE executed upon defendant Christopher Traver on 10/24/01 (hm) (Entered: 11/13/2001)
11/15/2001	33	ORDER by Judge A. R. Caputo granting motion to extend time to respond to plaintiff's amended complaint [29-1] ; Answer ddl extended to 12/5/01 for Mark Puffenberger M.D. (cc: counsel court) (hm) (Entered: 11/15/2001)
12/04/2001	34	ORDER by Judge A. R. Caputo ; Case Mgmt. Conference to be be held at 2:30 on 1/10/02 (cc: all counsel court) (sm) (Entered: 12/04/2001)
12/05/2001	35	ANSWER and affirmative defenses by defendant Mark Puffenberger M.D. w/COS; jury demand (hm) (Entered: 12/06/2001)
12/12/2001	36	CERTIFICATE OF SERVICE of Interrogatories and Request for Production of Documents by defendant Mark Puffenberger M.D. (hm) (Entered: 12/13/2001)
01/04/2002	37	Joint CASE MANAGEMENT Plan (hm) (Entered: 01/04/2002)
01/22/2002	38	CASE MANAGEMENT ORDER by Judge A. R. Caputo scheduling deadlines as follows: case placed on December 2002 trial list;

		motions to amend pleadings due by 6/28/02; motions for joinder of parties due by 6/28/02; discovery cutoff 6/28/02; expert witness requirements due 9/2/02 for plaintiff and 10/16/02 for defendant; supplemental expert reports due by 1/5/02; disclosures to be made by 8/30/02; all dispositive otions due by 8/30/02; a pretrial conference will be held in November 2002, date and time to be announced. Case to placed on STANDARD Case Mgmt. Track (cc: all counsel (w/L.R. Amendments) court) (hm) (Entered: 01/22/2002)
01/22/2002	39	MINUTE SHEET of case mgmt. conf. held 1/10/02 by Judge A. R. Caputo (hm) (Entered: 01/22/2002)
02/21/2002	40	JOINT CASE MANAGEMENT PLAN w/COS (hm) (Entered: 02/21/2002)
04/29/2002	41	MOTION by plaintiff A.M. to extend deadline for completion of discover to September 30, 2002 w/COS (hm) (Entered: 04/29/2002)
05/03/2002	42	ORDER by Judge A. R. Caputo stating what information may not be disclosed by the defendants pursuant to an agreement by the parties. (cc: all counsel court) (hm) (Entered: 05/03/2002)
05/03/2002	43	ORDER by Judge A. R. Caputo granting motion to extend deadline for completion of discovery to September 30, 2002 [41-1] and amending case management order as follows: discovery ddl 9/30/02; plaintiff expert witness requirement ddl 12/2/02; defendants ddl 1/16/03; supplemental ddl 2/5/03; disclosure ddl 11/29/02; dispositive mtn ddl 11/29/02; a pretrial conference will be held in February 2003, date and time to be announced (cc: all counsel court) (hm) (Entered: 05/03/2002)
09/11/2002	44	MOTION by defendant Luzerne County Juven, defendant Sandra Brulo, defendant Louis P. Kwarcinski, defendant Robert A. Roman, defendant Steve Adamchak, defendant John Doe Levin to extend discovery deadlines by sixty days w/concurrence and COS (hm) Modified on 09/11/2002 (Entered: 09/11/2002)
09/19/2002	45	REVISED MOTION by defendant Luzerne County Juven, defendant Sandra Brulo, defendant Louis P. Kwarcinski, defendant Robert A. Roman, defendant Steve Adamchak, defendant John Doe Levin to extend discovery w/concurrence and COS (hm) (Entered: 09/19/2002)
09/20/2002	46	SECOND REVISED MOTION by defendant Luzerne County Juven, defendant Sandra Brulo, defendant Louis P. Kwarcinski, defendant Robert A. Roman, defendant Steve Adamchak, defendant John Doe Levin to extend discovery w/COS (hm) (Entered: 09/20/2002)

09/23/2002	47	SECOND AMENDED CASE MANAGEMENT ORDER by Judge A. R. Caputo granting motion to extend discovery deadlines by sixty days [44-1]. Case is placed on the May 2003 trial list: motions to amend ddl 11/29/02; motions for joinder ddl 11/29/02; discovery ddl 11/29/02; plaintiff expert witness requirement ddl 2/3/03: defendants' 3/17/03; supplemental expert reports ddl 4/4/03: disclosures to be made by 1/29/03; a pretrial will be held in April 2003, date and time to be anounced. (cc: all counsel court) (hm) (Entered: 09/23/2002)
10/30/2002	48	THIRD AMENDED CASE MANAGEMENT ORDER by Judge A. R. Caputo granting second revised motion to extend discovery [46-1]. Case management order amended as follows: Case placed on June 2003 Trial list; motions to amend ddl 12/30/02; motion for joinder of parties ddl 12/30/02; discovery ddl 12/30/02; plaintiff expert witness requirement ddl 3/3/03; defendants ddl 4/17/03; supplements ddl 5/5/03; disclosures shall be made by 2/28/03; and dispositive motion ddl 2/28/03. A pretrial conference will be held in May 2003, date and time to be announced. This is the final extension. (cc: all counsel court jury ctrptr) (hm) (Entered: 10/30/2002)
12/30/2002	49	SECOND MOTION by plaintiff A.M. to amend complaint w/COS (hm) (Entered: 12/30/2002)
12/30/2002	50	EXHIBITS by plaintiff A.M. to motion to amend complaint [49-1] (hm) (Entered: 12/30/2002)
12/30/2002	51	MOTION by plaintiff A.M. to join Jerome Prawdzik as a named defendant w/COS (hm) (Entered: 12/30/2002)
12/30/2002	52	MEMORANDUM by plaintiff A.M. IN SUPPORT OF motion to join Jerome Prawdzik as a named defendant [51-1] w/COS (hm) (Entered: 12/30/2002)
12/30/2002	53	EXHIBITS by plaintiff A.M. to motion to join Jerome Prawdzik as a named defendant [51-1] (hm) (Entered: 12/30/2002)
01/29/2003	54	SUPPLEMENT by plaintiff A.M. to second motion to amend complaint [49-1] consisting of a revised page 7, and new exhibits N and O w/COS (hm) (Entered: 01/29/2003)
01/29/2003	55	SUPPLEMENT by plaintiff A.M. to motion to join Jerome Prawdzik as a named defendant [51-1], and memorandum in support of motion [52-1] consisting of revised pages 5-6 and new exhibits 6, 7, and 8 w/COS (hm) (Entered: 01/29/2003)
02/13/2003	56	ORDER by Judge A. R. Caputo granting plaintiff's second motion to amend complaint [49-1] (cc: all counsel court) (hm) (Entered:

		02/13/2003)
02/13/2003	57	ORDER by Judge A. R. Caputo granting motion to join Jerome Prawdzik as a named defendant [51-1]. Added party Jerome Prawdzik (cc: all counsel court) (hm) (Entered: 02/13/2003)
02/13/2003		SUMMONS ISSUED to plaintiff's attorney as to defendant Jerome Prawdzik (hm) (Entered: 02/13/2003)
02/20/2003	58	MOTION by defendant Jerome Prawdzik, defendant Christopher Traver, defendant Michael Considine, defendant Elaine Yozviak R.N. to file brief in excess of fifteen pages w/concurrence and COS (hm) (Entered: 02/21/2003)
02/20/2003	59	MOTION by defendant Luzerne County Juven, defendant Sandra Brulo, defendant Louis P. Kwarcinski, defendant Jerome Prawdzik, defendant Christopher Traver, defendant Michael Considine, defendant Elaine Yozviak R.N. to extend time to file dispositive motions and supporting briefs w/concurrence and COS (hm) (Entered: 02/21/2003)
02/26/2003	60	ORDER by Judge A. R. Caputo granting dfts' motion to file brief in excess of fifteen pages [58-1] but not to exceed 30 pages. (cc: all counsel court) (sm) (Entered: 02/26/2003)
02/26/2003	61	ORDER by Judge A. R. Caputo granting motion to extend time to file dispositive motions and supporting briefs until 3/14/03[59-1] (cc: all counsel court) (sm) (Entered: 02/26/2003)
02/26/2003	62	PRE-TRIAL DISCLOSURES by plaintiff A.M. w/COS (hm) (Entered: 02/26/2003)
02/28/2003	63	26(a)(3) PRETRIAL DISCLOSURES by Sandra Brulo, Michael Considine, Louis P. Kwarcinski, Luzerne County Juvenile Detention Center, Jerome Prawdzik, Christopher Traver, Elaine Yozviak R.N. (hm,) (Entered: 03/03/2003)
03/10/2003	64	MOTION for Extension of Time to Respond to Defendant's Dispositive Motions by A.M. w/concurrence and COS. (Attachments: # 1 Proposed Order)(hm,) (Entered: 03/10/2003)
03/14/2003	65	ORDER granting 64 Plaintiff's Motion for Extension of Time to File Responsive Briefs to Defendants' Dispositive Motions to 4/7/03.Signed by Judge A. Richard Caputo on 3/13/03 (hm,) (Entered: 03/14/2003)
03/14/2003	66	MOTION for Summary Judgment by Mark Puffenberger M.D.

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		w/nonconcurrence and COS.(hm,) (Entered: 03/14/2003)
03/14/2003	67	BRIEF IN SUPPORT re 66 MOTION for Summary Judgment filed by Mark Puffenberger M.D. w/COS. Brief in Opposition due by 4/1/2003 (hm,) (Entered: 03/14/2003)
03/14/2003	68	STATEMENT OF FACTS in Support of 66 MOTION for Summary Judgment filed by Mark Puffenberger M.D. (Attachments: # 1 Exhibits Continued# 2 Exhibits Continued# 3 Certificate of Service# 4 Proposed Order)(hm,) (Entered: 03/14/2003)
03/14/2003	69	MOTION for Summary Judgment by Sandra Brulo, Michael Considine, Louis P. Kwarcinski, Luzerne County Juvenile Detention Center, Christopher Parker, Jerome Prawdzik, Christopher Traver, Elaine Yozviak R.N. w/nonconcurrence.(hm,) (Entered: 03/17/2003)
03/14/2003	70	BRIEF IN SUPPORT of 69 MOTION for Summary Judgment filed by Sandra Brulo, Michael Considine, Louis P. Kwarcinski, Luzerne County Juvenile Detention Center, Christopher Parker, Jerome Prawdzik, Christopher Traver, Elaine Yozinak. Brief in Opposition due by 4/1/2003 (Attachments: # 1 Proposed Order)(hm,) (Entered: 03/17/2003)
03/14/2003	71	STATEMENT OF FACTS re 69 MOTION for Summary Judgment filed by Sandra Brulo, Michael Considine, Louis P. Kwarcinski, Luzerne County Juvenile Detention Center, Christopher Parker, Jerome Prawdzik, Christopher Traver, Elaine Yozviak R.N. (hm,) (Entered: 03/17/2003)
03/14/2003	72	EXHIBITS by Sandra Brulo, Michael Considine, Louis P. Kwarcinski, Luzerne County Juvenile Detention Center, Christopher Parker, Jerome Prawdzik, Christopher Traver, Elaine Yozviak R.N. IN SUPPORT OF 69 MOTION for Summary Judgment. (Attachments: # (1) Exhibits continued# 2 Exhibits continued# 3 Exhibits continued# 4 Exhibits continued# 5 Exhibits continued# 6 Exhibits continued# 7 Exhibits continued# 8 Exhibits continued, 408 pages in all)(hm,) (Entered: 03/17/2003)
03/17/2003	74	ANSWER to Second Amended Complaint by Sandra Brulo, Michael Considine, Louis P. Kwarcinski, Luzerne County Juvenile Detention Center, Christopher Parker, Jerome Prawdzik, Christopher Traver, Elaine Yozviak R.N. w/COS(hm,) (Entered: 03/18/2003)
03/18/2003	73	SECOND AMENDED COMPLAINT against Sandra Brulo, Michael Considine, Louis P. Kwarcinski, Luzerne County Juvenile Detention Center, Christopher Parker, Jerome Prawdzik, Mark Puffenberger M.D., Christopher Traver, Elaine Yozviak R.N., filed by A.M. (Attachments: # 1 Document continued# 2 Document continued)

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		(hm,) (Entered: 03/18/2003)
03/19/2003	75	CERTIFICATE OF SERVICE by Sandra Brulo, Michael Considine, Louis P. Kwarcinski, Luzerne County Juvenile Detention Center, Christopher Parker, Jerome Prawdzik, Christopher Traver, Elaine Yozviak R.N. re 74 Answer to Amended Complaint (hm,) (Entered: 03/19/2003)
03/27/2003	76	WAIVER OF SERVICE Returned Executed by Jerome Prawdzik. Jerome Prawdzik waiver sent on 2/21/2003, answer due 4/22/2003. (hm,) (Entered: 03/27/2003)
03/27/2003	77	MOTION to Exceed Page Limitation re response to motion for summary judgment by A.M..(sm,) (Entered: 03/27/2003)
03/31/2003	78	ORDER granting 77Plaintiff's Motion for Leave to File Excess Pages insofar as Plaintiff is granted leave to file a brief in response to defendants' motion for summary judgment not to exceed thirty-five (35) pages in length.Signed by Judge A. Richard Caputo on 03/31/03 (ct,) (Entered: 03/31/2003)
04/02/2003	79	ANSWER to Amended Complaint by Mark Puffenberger M.D..c/s (sm,) (Entered: 04/02/2003)
04/07/2003	80	BRIEF IN OPPOSITION re 66 MOTION for Summary Judgment *by Defendant Puffenberger* filed by A.M.. Reply Brief due by 4/24/2003. (Rosado, Lourdes) (Entered: 04/07/2003)
04/07/2003	81	STATEMENT OF FACTS re 68 Statement of Facts *Response to Defendant Puffenberger's Statement of Undisputed Facts* filed by A.M.. (Rosado, Lourdes) (Entered: 04/07/2003)
04/07/2003	82	BRIEF IN OPPOSITION re 69 MOTION for Summary Judgment *by Defendants Luzerne County Juvenile Detention Center, Brulo, Kwarcinski, Prawdzik, Traver, Parker, Considine, and Yozviak* filed by A.M.. Reply Brief due by 4/24/2003. (Rosado, Lourdes) (Entered: 04/07/2003)
04/07/2003	83	STATEMENT OF FACTS re 71 Statement of Facts *Response to Statement of Undisputed Facts filed by Defendants Luzerne County Juvenile Detention Center, Brulo, Kwarcinski, Prawdzik, Traver, Parker, Considine, and Yozviak* filed by A.M.. (Rosado, Lourdes) (Entered: 04/07/2003)
04/07/2003	84	BRIEF IN OPPOSITION re 69 MOTION for Summary Judgment, 66 MOTION for Summary Judgment *Schedule of Exhibits--Part 1* filed by A.M.. Reply Brief due by 4/24/2003. (Attachments: # 1 Exhibit(s)

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		Exhibit #1# 2 Exhibit(s) Exhibit #2# 3 Exhibit(s) Exhibit #3# 4 Exhibit(s) Exhibit #4# 5 Exhibit(s) Exhibit #5# 6 Exhibit(s) Exhibit #6# 7 Exhibit(s) Exhibit #7# 8 Exhibit(s) Exhibit #8# 9 Exhibit(s) Exhibit #9# 10 Exhibit(s) Exhibit #10# 11 Exhibit(s) Exhibit #11# 12 Exhibit(s) Exhibit #12# 13 Exhibit(s) Exhibit #13# 14 Exhibit(s) Exhibit #14# 15 Exhibit(s) Exhibit #15# 16 Exhibit(s) Exhibit #16# 17 Exhibit(s) Exhibit #17# 18 Exhibit(s) Exhibit #18# 19 Exhibit(s) Exhibit #19# 20 Exhibit(s) Exhibit #20# 21 Exhibit(s) Exhibit #21# 22 Exhibit(s) Exhibit #22# 23 Exhibit(s) Exhibit #23# 24 Exhibit(s) Exhibit #24# 25 Exhibit(s) Exhibit #25# 26 Exhibit(s) Exhibit #26# 27 Exhibit(s) Exhibit #27# 28 Exhibit(s) Exhibit #28# 29 Exhibit(s) Exhibit #29# 30 Exhibit(s) Exhibit #30# 31 Exhibit(s) Exhibit #31# 32 Errata Exhibit #32# 33 Exhibit(s) Exhibit #33# 34 Exhibit(s) Exhibit #34# 35 Exhibit(s) Exhibit #35# 36 Exhibit(s) Exhibit #36# 37 Exhibit(s) Exhibit #37# 38 Exhibit(s) Exhibit #38)(Rosado, Lourdes) (Entered: 04/07/2003)
04/07/2003	85	BRIEF IN OPPOSITION re 69 MOTION for Summary Judgment, 66 MOTION for Summary Judgment *Plaintiff's Exhibits -- Part 2* filed by A.M.. Reply Brief due by 4/24/2003. (Attachments: # 1 Exhibit(s) Exhibit #40# 2 Exhibit(s) Exhibit #41# 3 Exhibit(s) Exhibit #42# 4 Exhibit(s) Exhibit #43# 5 Exhibit(s) Exhibit #44# 6 Exhibit(s) Exhibit #45# 7 Exhibit(s) Exhibit #46# 8 Exhibit(s) Exhibit #47# 9 Exhibit(s) Exhibit #48# 10 Exhibit(s) Exhibit #49# 11 Exhibit(s) Exhibit #50# 12 Exhibit(s) Exhibit #51# 13 Exhibit(s) Exhibit #52# 14 Exhibit(s) Exhibit #53# 15 Exhibit(s) Exhibit #54)(Rosado, Lourdes) (Entered: 04/07/2003)
04/07/2003	86	BRIEF IN OPPOSITION re 69 MOTION for Summary Judgment, 66 MOTION for Summary Judgment *Plaintiff's Exhibits -- Part 3* filed by A.M.. Reply Brief due by 4/24/2003. (Attachments: # 1 Exhibit(s) Exhibit #57)(Rosado, Lourdes) (Entered: 04/07/2003)
04/07/2003	87	BRIEF IN OPPOSITION re 66 MOTION for Summary Judgment, 69 MOTION for Summary Judgment *Plaintiff's Exhibits--Part 4 of 4* filed by A.M.. Reply Brief due by 4/24/2003. (Attachments: # 1 Exhibit(s) Exhibit #59# 2 Exhibit(s) Exhibit #60# 3 Exhibit(s) Exhibit #62# 4 Exhibit(s) Exhibit #63# 5 Exhibit(s) Exhibit #64# 6 Exhibit(s) Exhibit #65# 7 Exhibit(s) Exhibit #68# 8 Errata Exhibit #69)(Rosado, Lourdes) (Entered: 04/07/2003)
04/08/2003	88	MOTION for Extension of Time to Submit Expert Reports to 5/5/03 by Steve Adamchak, Sandra Brulo, Michael Considine, Louis P. Kwarcinski, John Doe Levin, Luzerne County Juvenile Detention Center, Christopher Parker, Jerome Prawdzik, Christopher Traver, Elaine Yozviak R.N. w/nonconcurrence and COS. (Attachments: # 1 Proposed Order)(hm,) (Entered: 04/09/2003)

04/09/2003	89	MOTION for Extension of Time to Submit Expert Reports to 5/5/03 by Mark Puffenberger M.D. w/COS. (Attachments: # 1 Proposed Order)(hm,) (Entered: 04/09/2003)
04/09/2003	90	ADDITIONAL EXHIBITS (Part 1 of 2) by A.M. to 81 Statement of Facts filed by A.M., 82 Brief in Opposition filed by A.M., 83 Statement of Facts, filed by A.M., 80 Brief in Opposition filed by A.M.(hm,) (Entered: 04/10/2003)
04/09/2003	91	ADDITIONAL EXHIBITS (Part 2 of 2) by A.M.to 81 Statement of Facts filed by A.M., 82 Brief in Opposition filed by A.M., 83 Statement of Facts, filed by A.M., 80 Brief in Opposition filed by A.M. (Attachments: # 1 Part 2 of Exhibits Continued)(hm,) (Entered: 04/10/2003)
04/11/2003	92	ADDITIONAL EXHIBIT (#61) by A.M. to 81 Statement of Facts filed by A.M., 82 Brief in Opposition filed by A.M., 83 Statement of Facts, filed by A.M., 80 Brief in Opposition filed by A.M..(hm,) (Entered: 04/11/2003)
05/01/2003	93	4TH AMENDED CASE MANAGEMENT ORDER: Case placed on the July 2003 trial list. Signed by Judge A. Richard Caputo on 05/01/03. (ct,) (Entered: 05/05/2003)
05/29/2003	94	MOTION to Extend Trial Date by Mark Puffenberger M.D. w/concurrence and COS.(hm,) (Entered: 05/29/2003)
06/04/2003	95	ORDER granting 94 Motion to Continue trial Trial set for SEPTEMBER 2003 trial list before Honorable A. Richard Caputo.Signed by Judge A. Richard Caputo on 6/4/03 (sm,) (Entered: 06/04/2003)
06/30/2003	96	ORDER granting 66 Defendant Mark Puffenberger's Motion for Summary Judgment as to Counts I and IV, granting 69 Defendants' Luzerne County Juvenile Detention Center, Sandra M. Brulo, Louis P. Kwarcinski, Jerome Prawdzik, Christopher Traver, Christopher Parker, Michael Considine, and Elaine Yozviak Motion for Summary Judgment as to Counts I through IV of Plaintiff's second amended complaint. The ramaining pendent state law claims (County V through VIII) are dismissed for lack of subject matter jurisdiction, without prejudice to Plaintiff's ability to re-file theses claims in state court. Judgment is entered in favor of all named defendants with regard to all federal claims stated in Plaintiff's second amended complaint. The Clerk of Court shall mark this case closed. Signed by Judge A. Richard Caputo on 6/30/03. (hm,) (Entered: 07/01/2003)
06/30/2003	97	SUMMARY JUDGMENT be and hereby is entered in favor of Luzerne County Juvenile Detention Center, Sandra Brulo, Louis P.

		Kwarcinski, Elaine Yozviak, Christopher Traver, Christopher Parker, Michael Considine, and Jerome Prawdzik against A.M. as to Counts I through IV of Plaintiff's second amended complaint. (hm,) (Entered: 07/01/2003)
06/30/2003	98	SUMMARY JUDGMENT be and hereby is entered in favor of Mark Puffenberger against A.M. as to Counts I and IV of Plaintiff's second amended complaint. (hm,) (Entered: 07/01/2003)
07/16/2003	99	NOTICE OF APPEAL in Non-Prisoner Case as to 96 Order on Motion for Summary Judgment by A.M. Filing Fee and Docket Fee PAID. (Filing fee $105, Receipt Number 333 92726). The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. (hm,) (Entered: 07/16/2003)
08/04/2003	101	TRANSCRIPT PURCHASE ORDER REQUEST by A.M. No transcripts requested. (hm,) (Entered: 08/04/2003)

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09/22/2003 11:52:08			
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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

A.M., by and through his next friend and mother, J.M.K.,

Plaintiff,

v.

LUZERNE COUNTY JUVENILE DETENTION CENTER, SANDRA BRULO, LOUIS P. KWARCINSKI, ELAINE YOZVIAK, CHRISTOPHER TRAVER, MARK PUFFENBERGER, M.D., CHRISTOPHER PARKER, MICHAEL CONSIDINE, and JEROME PRAWDZIK,

Defendants.

CIVIL ACTION NO. 3:01-CV-1276

(JUDGE CAPUTO)

ORDER

NOW, this 30th day of June 2003, **IT IS HEREBY ORDERED** that:

1. Defendants Luzerne County Juvenile Detention Center, Sandra M. Brulo, Louis P. Kwarcinski, Jerome Prawdzik, Christopher Traver, Christopher Parker, Michael Considine, and Elaine Yozviak's motion for summary judgment (Doc. 69) is **GRANTED** as to Counts I through IV of Plaintiff's second amended complaint (Doc. 73.)

2. Defendant Mark Puffenberger's motion for summary judgment (Doc. 66) is **GRANTED** as to Counts I and IV.

3. The remaining pendent state law claims (Counts V through VIII) are **DISMISSED** for lack of subject matter jurisdiction, without prejudice to Plaintiff's ability to re-file these claims in state court.

4. Judgment is **ENTERED** in favor of all named Defendants with regard to all federal claims stated in Plaintiff's second amended complaint.

5. The Clerk of Court shall mark this case closed.

A. Richard Caputo
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

A.M., by and through his next friend and mother, J.M.K.,

Plaintiff,

v.

LUZERNE COUNTY JUVENILE DETENTION CENTER, SANDRA BRULO, LOUIS P. KWARCINSKI, ELAINE YOZVIAK, CHRISTOPHER TRAVER, MARK PUFFENBERGER, M.D., CHRISTOPHER PARKER, MICHAEL CONSIDINE, and JEROME PRAWDZIK,

Defendants.

CIVIL ACTION NO. 3:01-CV-1276

(JUDGE CAPUTO)

MEMORANDUM

Before the Court are Defendants Luzerne County Juvenile Detention Center ("Detention Center"), Sandra Brulo, Louis P. Kwarcinski, Elaine Yozviak, Christopher Traver, Christopher Parker, Michael Considine, and Jerome Prawdzik's motion for summary judgment. (Doc. 69.) Also before the Court is Defendant Mark Puffenberger, M.D.'s motion for summary judgment. (Doc. 66.)

Plaintiff A.M., a minor who is now 17 years of age, commenced this action by and through his mother, J.M.K., on July 10, 2001. (Doc. 1.) Plaintiff filed an amended complaint on September 26, 2001 (Doc. 25) and, with leave of the Court, filed a second amended complaint on March 18, 2003. (Doc. 73.) Both motions have been fully briefed and are ripe for disposition. Because Plaintiff has not submitted evidence from which it

may be inferred that Defendants' conduct rises to the level of deliberate indifference or, in the case of the Defendandant staff members called upon to make urgent decisions, "shocks the conscience," the Court will grant Defendants' motions for summary judgment with regard to all substantive due process claims contained in Counts I through IV of Plaintiff's second amended complaint.

BACKGROUND

On July 12, 1999, Plaintiff A.M., then 13 years of age, was arrested in Lake Township, Pennsylvania by the Lake Township Police Department. (Doc. 73, ¶ 25; Doc. 68, ¶ 1.) This occurred after Plaintiff's mother phoned Children and Youth Services and reported that her son, the Plaintiff, had "acted out sexually with his three-year-old sister." (Docs. 84-87, Ex. 1 at 1.[1]) Plaintiff was taken to the Luzerne County Juvenile Detention Center on the same date and remained there until August 19, 1999. (Doc. 73, ¶ 27; Doc. 71, ¶ 1.) The mistreatment Plaintiff allegedly suffered while at the Detention Center, and the alleged lack of adequate medical care Plaintiff received during his confinement, are the subject of this lawsuit.

Plaintiff has submitted evidence that he suffered physical abuse at the hands of other Detention Center residents. An incident report dated July 26, 1999, apparently handwritten by Plaintiff, states that another resident "spits at me and sometimes for no reason." The July 26, 1999 report also indicates that "[t]he mark on my arm is from the kids punching me" and that Plaintiff's arm is "very sore." The report also states that other

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[1] For purposes of docketing, Plaintiff's exhibits, submitted as a single, consecutively numbered document on April 7, 2003, have been separated into four documents. The exhibits appear on the docket as Documents 84-87, and the Court will refer to the exhibits accordingly.

residents put Plaintiff's head in a garbage can, almost put his head in the toilet, "put a bug on my bed" on two occasions, and put urine on his bed. (Docs. 84-87, Ex. 14.) There is another incident report, dated August 1, 1999 and written by Defendant Traver, which reports that Plaintiff was struck in the back of the head with a Ping-Pong paddle thrown by another resident. A report on the same date written by Defendant Considine reports that Plaintiff had a lump on the back of his head as a result of the Ping-Pong paddle incident.[2] Another incident report, dated August 3, 1999, documents an incident where another resident "punched [Plaintiff] in the face." (Docs. 84-87, Ex. 9.)[3] An August 5, 1999 incident report indicates that Plaintiff was whipped with a towel by another resident. (Docs. 84-87, Ex. 7.) An incident report dated August 6, 1999 indicates that Plaintiff was pulled away from a table, and a bowl was taken out of his hand with "tremendous force." (Docs. 84-87, Ex. 74.) Plaintiff has also submitted evidence that he experienced a weight loss during his time at the Detention Center, from 92-93 pounds when he entered, down to "seventy-some-odd" pounds when he left. (Docs. 84-87, Ex. 69 at 87.)

STANDARD

Summary judgment is appropriate if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there

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[2] Another report, which Plaintiff states was written by Tigue, is consistent with Traver and Considine's accounts of the Ping-Pong paddle incident. Tigue recommended that the resident who threw the paddle be placed "in Cell #13 w/out a mattress so he cannot sleep + fit him w/an anti-spitting helmet." (Docs. 84-87, Ex. 18.)

[3] *See also* Docs. 84-87, Ex. 8.

is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). Essentially, the inquiry is "whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-252 (1986).

In a summary judgment motion, the moving party bears the initial responsibility of stating the basis for its motions and identifying those portions of the record which demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). An issue is genuine only if there is a sufficient evidentiary basis on which a reasonable jury could find for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). A factual dispute is material only if it might affect the outcome of the suit under governing law. *Id.* at 248. The moving party "can discharge that burden by 'showing' – that is, pointing out to the district court – that there is an absence of evidence to support the nonmoving party's case." *Id.* at 325.

Once the moving party points to evidence demonstrating that no issue of material fact exists, the non-moving party has the duty to set forth specific facts showing that a genuine issue of material fact exists and that a reasonable factfinder could rule in its favor. *Ridgewood Bd. of Educ. v. N.E.*, 172 F.3d 238, 252 (3d Cir. 1999) (*citing Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). "Speculation and conclusory allegations do not satisfy this duty." *Ridgewood*, 172 F.3d at 252 (*citing Groman v. Township of Manalapan*, 47 F.3d 628, 637 (3d Cir. 1995)).

To defeat summary judgment, the non-moving party cannot rest on the pleadings,

but rather that party must go beyond the pleadings and present "specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e). Similarly, the non-moving party cannot rely on unsupported assertions, conclusory allegations, or mere suspicions in attempting to survive a summary judgment motion. *Williams v. Borough of W. Chester*, 891 F.2d 458, 460 (3d Cir. 1989) (*citing Celotex*, 477 U.S. at 325 (1986)). Further, the non-moving party has the burden of producing evidence to establish *prima facie* each element of its claim. *Celotex*, 477 U.S. at 322-23. If the court, in viewing all reasonable inferences in favor of the non-moving party, determines that there is no genuine issue of material fact, then summary judgment is proper. *Id.* at 322; *Wisniewski v. Johns-Manville Corp.*, 812 F.2d 81, 83 (3d Cir. 1987).

DISCUSSION

I. **Substantive Due Process**

Plaintiff's federal claims each relate to Defendants' alleged violations of the Due Process Clause of the Fourteenth Amendment. Plaintiff brings action pursuant to 42 U.S.C. § 1983.

Count I of Plaintiff's complaint alleges that the Detention Center, Brulo, and Kwarcinski are liable in their official capacities under § 1983 for violating Plaintiff's rights under the Due Process Clause by failing to protect Plaintiff from harm and failing to treat Plaintiff. Additionally, Count I alleges that Dr. Puffenberger is liable in his official capacity for failure to treat Plaintiff. (Doc. 73, ¶¶ 129-143.) Count II alleges that Defendants Brulo, Kwarcinski, and Prawdzik are liable in their individual capacities under § 1983 for failing to protect Plaintiff from harm and failing to treat Plaintiff. (Doc. 73, ¶¶ 144-151.)

Count III alleges that Defendants Prawdzik, Traver, Parker, and Considine are liable under § 1983 for failure to protect Plaintiff from harm. (Doc. 73, ¶¶ 152-156.) Count IV alleges that Defendants Puffenberger and Yozviak are liable in their individual capacities under § 1983 for failure to treat Plaintiff. (Doc. 73, ¶¶ 157-162.)

A. Standard To Be Applied In Assessing Due Process Claims Arising From Allegation of Failure to Treat Plaintiff and Failure to Protect Plaintiff From Harm

The federal questions in this case concern the Due Process Clause of the Fourteenth Amendment.[4] There are two different standards that have been applied to § 1983 substantive due process claims: there is the "deliberate indifference" standard, and there is the heightened "shocks the conscience" standard. The applicable standard depends on the nature and context of the allegedly unconstitutional acts.

When a state actor is faced with a highly pressurized situation requiring urgent action, and when his acts result in an injury to another person, courts assessing a due process claim will apply a "shocks the conscience" standard. Thus, official actions taken in "hyperpressurized" environments such as a high speed police chase or a prison riot call for a "shocks the conscience" test. *County of Sacramento v. Lewis*, 523 U.S. 833, 852-53 (1998); *Miller v. City of Philadelphia*, 174 F.3d 368, 375-76 (1999) (dicta). The Court of Appeals for the Third Circuit has held that the "shocks the conscience" standard applies in cases where urgent action was required, even though the situation was not as highly pressurized as a high-speed chase or a prison riot. *See, e.g., Miller v. City of*

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[4] The parties agree, correctly, that the Eighth Amendment does not apply in this case because Plaintiff was a pre-trial detainee, not an adjudicated offender, at all times relevant to this action. *See Bell v. Wolfish*, 441 U.S. 520 (1979).

Philadelphia, 174 F.3d 368 (3d Cir. 1999) (applying "shocks the conscience" standard in where social worker had to make urgent decision to remove children from the custody of a parent suspected of child abuse); *Brown v. Pa. Dep't of Health Emergency Med. Servs. Training Inst.*, 318 F.3d 473 (3d Cir. 2003) (applying "shocks the conscience" standard to case involving emergency medical personnel). *Brown* instructs that courts should apply the "shocks the conscience" standard "in all substantive due process cases if the state actor had to act with urgency." *Id.* at 480. On the other hand, *Ziccardi v. City of Philadelphia*, 288 F.3d 57, 66 (3d Cir. 2002) states that a substantive due process claim against a government official who did not have to act with urgency requires only a showing of deliberate indifference.[5] *Id.* at 65-66.

The case law is very clear that "[m]ere negligence is never sufficient for substantive due process liability." *Behm v. Luzerne County Children & Youth Policy Makers*, 172 F. Supp.2d 575, 584 (M.D. Pa. 2001) (citing *Nicini v. Morra*, 212 F.3d 798, 810 (3d Cir. 2000)). Whether the circumstances dictate the application of a "deliberate indifference" standard or a "shocks the conscience" standard, there can be no doubt that, with a § 1983 substantive due process claim, the degree of culpability must significantly exceed mere negligence for liability to attach. Indeed, even gross negligence does not meet the deliberate indifference standard. *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976). Obviously, because "shocks the conscience" is a higher standard than deliberate

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[5] Deliberate indifference refers to conduct by which a person consciously disregards a "substantial risk of serious harm." *Farmer v. Brennan*, 511 U.S. 825, 836 (1994). The "shocks the conscience" standard requires, at a minimum, that the defendant was aware of a "great risk" of harm and proceeded to act nonetheless. *See Ziccardi*, 288 F.3d at 66.

indifference, the "shocks the conscience" standard is not satisfied simply by a showing of gross negligence.

B. **Count I**

1. **"Official Capacity" Claims Against Detention Center, Brulo, and Kwarcinski**

Count I of Plaintiff's complaint alleges that the Detention Center, along with Defendants Brulo and Kwarcinski, are liable in their official capacities under § 1983 for violating Plaintiff's rights under the Due Process Clause by failing to protect Plaintiff from harm and failing to treat Plaintiff. These claims are based on the alleged failure of these defendants to have adequate policies to protect the safety of youths in the detention center, to ensure that youths receive adequate medical care, and to ensure that staff was appropriately trained. More specifically, Plaintiff alleges that Brulo and Kwarcinski, as policy makers, are subject to liability in their official capacity due to (1) deficient hiring and staffing practices; (2) inadequate training; (3) lack of written protocol to ensure youth safety; and (4) lack of policy and procedures to address physical and mental health needs of the residents. (Doc. 82 at 8-16.)

The "deliberate indifference" standard applies in cases where it is claimed that an inadequate policy led to a constitutional violation. *Moleski v. Cheltenham Twp.*, 2002 U.S. Dist. LEXIS 12311 (E.D. Pa. April 30, 2002) (citing *Beck v. City of Pittsburgh*, 89 F.3d 966, 972 (3d Cir. 1996)). In addition to showing that policy makers acted (or failed to act) in a manner that was deliberately indifferent to the rights of others, a plaintiff seeking to establish official-capacity liability under § 1983 must demonstrate causation. *See Brown v. Pa. Dept. of Health Emergency Services Training Inst.*, 318 F.3d 473, 483

(3d Cir. 2003); *Board of County Commissioners of Bryan County v. Brown*, 520 U.S. 397, 404 (1997). In the *Bryan County* case, the Court held that a plaintiff must establish a "direct causal link" between the policy and the alleged harm. In *Kneipp by Cusack v. Tedder*, 95 F.3d 1199 (3d Cir. 1996), the Court of Appeals for the Third Circuit explained, "[t]o establish the necessary causation, a plaintiff must demonstrate a plausible nexus or affirmative link between the municipality's custom and the specific deprivation of constitutional rights at issue." *Id.* at 1213 (citations omitted). *See also Bielevicz v. Dubinon*, 915 F.2d 845, 850 (3d Cir.1990) (plaintiff carries burden of demonstrating a plausible nexus or affirmative link between the municipality's custom or policy and the constitutional deprivation challenged).

a. **Deficient Hiring and Staffing Policies**

Plaintiff cites evidence of record suggesting that the Detention Center had employees who lacked an Associate's Degree in a social science, but who were not of "exceptional ability" as required by state law. (Doc. 82 at 11-12.) Plaintiff also cites evidence from which it could be inferred that the Detention Center had a policy of understaffing. (Docs. 84-87, Ex. 41; Ex. 65 at 34.) The evidence submitted is insufficient to sustain a § 1983 substantive due process claim regarding hiring and staffing policies. First of all, no direct causal link has been established between the hiring of employees without an Associate's Degree and the harms suffered by Plaintiff. Any causal link that might be suggested is so tenuous as to rely on pure speculation.

Similarly, regarding understaffing, evidence has been submitted that the Detention Center complied with staff-to-child ratios by counting all staff members in the building, not

only those who are physically supervising the youths. (Docs. 84-87, Ex. 57 at 5.) However, no evidence has been submitted that this method of evaluating compliance with staff-to-child ratios was incorrect. Plaintiff cites a letter of resignation written by Defendant Traver, apparently dated February 12, 2001, wherein he expresses concerns about the Detention Center's management. (Docs. 84-87, Ex. 41.) The relevance of this letter is questionable, as it was written long after the events at issue in this case. Although the letter suggests that staff members were overburdened with tasks that are ancillary to supervising children, Traver's deposition makes clear that the largest number of children that he had to supervise at any given time was about 10. (Docs. 84-87, Ex. 65 at 34.) Assuming that a policy existed whereby, on occasion, individual Detention Center employees had to supervise 10 children at a time, this does not rise to the level of deliberate indifference. Furthermore, Plaintiff has not cited any evidence suggesting that Plaintiff's physical injuries occurred on an occasion when understaffing was a problem. Therefore, there is not a direct causal link between any such policy and Plaintiff's injuries.

b. Inadequate Training

Plaintiff also claims that the Detention Center staff received inadequate training. Specifically, Plaintiff states that employees should have received training in "de-escalating conflicts between youth and managing youth behavior generally, dealing with sex offenders, or how to identify and protect youth in the population who would be easily victimized." (Doc. 82 at 12.)

On a failure-to-train claim, "a plaintiff pressing a § 1983 claim must identify a failure to provide specific training that has a causal nexus with [his] injuries and must demonstrate that the absence of that specific training can reasonably be said to reflect a

deliberate indifference to whether the alleged constitutional deprivations occurred." *Reitz v. County of Bucks*, 125 F.3d 139, 145 (3d Cir. 1997). *Reitz* suggests that it is not enough to state broadly that the "overall training program" was inadequate. A plaintiff must specify what an employee did not know, explain how the employee's possession of this knowledge would have prevented the plaintiff's injury, and discuss why the failure to equip the employee with this information is "deliberate indifference."

Plaintiff faults the Detention Center – along with Defendants Brulo and Kwarcinski – for not having adequate training regarding "de-escalating conflicts between youth." (Doc. 82 at 13.) However, Plaintiff does not explain what training along these lines employees should have received; nor does Plaintiff submit evidence that such training would have prevented Plaintiff's injuries, which the record suggests often occurred in spontaneous fights and altercations.

Plaintiff faults the Detention Center, Brulo, and Kwarcinski for not having an adequate training program regarding dealing with sex offenders and protecting those who would be easily victimized. It appears to be Plaintiff's argument that because he was an alleged sex offender, he was at a greater risk of physical harm or attack by other youths. Assuming this is true, and assuming that a better training program could have ameliorated this problem, Plaintiff nevertheless has failed to come forward with evidence from which deliberate indifference could be inferred. Quite the contrary, the evidence of record demonstrates that staff members were concerned for the physical safety of Plaintiff. For example, an August 5, 1999 incident report that details an instance where Plaintiff was whipped with a towel by another resident carries the observation that this was the second incident between Plaintiff and the other resident in two days. The staff

member recommends that the two be separated. (Docs. 84-87, Ex. 7.) Other incident reports reflect the same theme of staff members seeking to protect and deal with a young resident who seemed to become involved in many fights, some of his own making and others not. Deliberate indifference refers to conduct by which a person consciously disregards a "substantial risk of serious harm." *Farmer v. Brennan*, 511 U.S. 825, 836 (1994). Plaintiff has cited no evidence that the Detention Center, through Brulo or Kwarcinski, trained (or did not train) employees in a manner that suggests a conscious disregard of a substantial risk of serious harm.

c. Lack of Written Protocol To Ensure Youth Safety

Plaintiff alleges that the lack of a written policy manual in the summer of 1999 forms a basis for § 1983 liability. The Court is aware of no case establishing that the absence of a ***written*** policy is itself a basis for a finding of deliberate indifference.

Similarly, Plaintiff points to discrepancies in the record concerning the protocol for reviewing incident reports. However, even inferring that a policy existed whereby incident reports were reviewed inconsistently, or sometimes not at all, the evidence does not suggest a direct causal link between the non-review of any incident report and Plaintiff's injuries.

Finally, Plaintiff claims that the Detention Center's policy of keeping records concerning residents' alleged offenses in an unlocked desk drawer in the boys' unit amounts to deliberate indifference. Although Plaintiff suggests that this might be a dangerous practice (in that other residents may discover who is an alleged sexual offender and single him out for abuse), Plaintiff cites no evidence suggesting that this is

what happened to Plaintiff. (Doc. 82 at 15.) Therefore, a direct causal link is lacking between this policy and Plaintiff's injuries.

d. Lack of Policy and Procedures to Address Mental and Physical Health Needs of Residents

Plaintiff seeks to hold the Detention Center, along with Brulo and Kwarcinski, liable for not implementing a policy for addressing the mental and physical needs of residents. (Doc. 82 at 15-17.) Pursuant to 55 Pa. Code § 3760.31, "[a] physician licensed to practice in the Commonwealth shall be designated to assist the administrator in planning and coordinating the medical program." Plaintiff suggests that a genuine issue of material fact exists concerning which physician had responsibility under § 3760.31 to assist in the formulation of a medical program, as well as whether this state requirement was met at all. (Doc. 82 at 16.) The Court disagrees.

In the first place, even assuming that a state law was violated, this alone does not support a § 1983 due process claim. *Doe v. Gooden*, 214 F.3d 952, 955 (8th Cir. 2000). Section 1983 provides a cause of action for violations of federally protected rights, not state statutes or regulations. Unlike state tort law, where violation of state law may, in some cases, constitute "per se" negligence, the Court is aware of no decision holding that violation of a state statute or regulation constitutes "per se" deliberate indifference for § 1983 purposes. Therefore, even supposing there was a violation of § 3760.31, this would not constitute deliberate indifference.[6]

Plaintiff suggests that there was no one at the Detention Center who was

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[6] In fact, Defendants have submitted a "Certificate of Compliance" which verifies the Detention Center's compliance with 55 Pa. Code § 3760 for the relevant time period. (Doc. 72, Ex. 33.)

responsible for the residents' mental health issues. (Doc. 82 at 16.) The Supreme Court held in *Estelle v. Gamble*, 429 U.S. 97 (1976) that an inmate may bring an Eighth Amendment claim for failure-to-treat when prison officials demonstrate deliberate indifference to an inmate's serious injury or illness.[7] *Id.* at 105. The *Estelle* Court equated deliberate indifference to serious medical needs of prisoners with the "unnecessary and wanton infliction of pain." *Id.* Examples of such deliberate indifference are indicative of the magnitude of neglect necessary to show deliberate indifference. The *Estelle* court cited *Williams v. Vincent*, 508 F. 2d 541 (2d Cir. 1974), a case where the court found that it may have been deliberate indifference for the prison doctor to choose the "easier and less efficacious treatment" of throwing away the prisoner's ear and stitching the stump. *Id.* at 105, n.10. Similarly, the court held in *Martinez v. Mancusi*, 443 F.2d 921 (2d Cir. 1970) that an inmate stated a claim for deliberate indifference in a civil rights case when he alleged that the prison doctor refused to administer the prescribed pain killer following leg surgery and rendered the surgery unsuccessful by requiring the inmate to stand despite the surgeon's contrary instructions.

Neglect on the order of that described in *Williams* and *Martinez* is required for a § 1983 failure-to-treat claim. Plaintiff has not pointed to evidence of record that suggests a deprivation of that magnitude. To be sure, Plaintiff cites their expert's report which,

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[7] The instant case involves a pre-trial detainee and arises under the Fourteenth Amendment. However, it is well established that in failure-to-treat cases, the same minimum standard of care applies in Eight Amendment claims involving convicted prisoners as applies in Fourteenth Amendment claims involving pre-trial detainees. Therefore, the *Estelle* standard is applicable to the instant case. *See Hare v. City of Corinth*, 135 F.3d 320, 327 (5th Cir. 1998); *Reynolds v. Wagner*, 128 F.3d 166, 173 (3d Cir. 1997).

quoting Plaintiff's mother, states that Plaintiff is now more aggressive than before he entered the Detention Center, that Plaintiff experienced trauma as a result, that Plaintiff has developed a "sink or swim" mentality, that Plaintiff has developed unusual sexual practices learned in the Detention Center, and that Plaintiff has had a general decline in overall functioning since detention. (Docs. 84-87, Ex. 1 at 7-9.) However, Plaintiff has not submitted evidence that connects the alleged lack of a plan for dealing with residents' mental health issues with these long-term adverse effects.

The evidence is undisputed that Plaintiff had mental health problems before he entered the Detention Center. Although a party is entitled to all favorable inferences that are reasonably drawn in a summary judgment proceeding, *see Celotex*, 477 U.S. at 322, the Court is neither required nor permitted to entertain rank speculation, conclusory allegations, or unsupported assertions. *See Ridgewood Bd. of Educ. v. N.E.*, 172 F.3d 238, 252 (3d Cir. 1999) (*citing Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). Plaintiff simply has not pointed to sufficient evidence that any policy or custom of not providing adequate mental health care actually worsened Plaintiff's mental health problems or otherwise cause an injury of constitutional dimensions. *Compare Greene v. Maricopa County*, 1997 U.S. App. LEXIS 13218 at **2-3 (9th Cir. 1997) (affirming district court's grant of summary judgment where, despite a ten-day delay in providing an inmate with mental health treatment, no evidence was submitted indicating that the delay in treatment actually worsened the inmate's mental condition).

The Detention Center's alleged failure to have an adequate medical plan for dealing with residents' mental health problems amounts, at most, to negligence. This is

not sufficient to sustain a § 1983 due process claim. *See Hutchinson v. United States*, 838 F.2d 390, 394 (9th Cir. 1988) ("[m]ere negligence in diagnosing or treating a medical condition, without more, does not violate a prisoner's Eighth Amendment rights"). The failure of a prison to meet model standards for good prison administration does not mean that the care provided was so deficient as to violate the Eighth (or Fourteenth) Amendment. *See Rogers v. Evans*, 792 F.2d 1052, 1058 (11th Cir. 1986).

In point of fact, Defendants have submitted evidence in the form of a medical log indicating that from July 24, 1999 through August 18, 1999, Plaintiff received medication.[8] This, it appears from the record that Plaintiff may have gone 12 days without medication. This alone does not constitute deliberate indifference, *see Greene*, and with a lack of evidence suggesting that this delay in treatment (even if a result of an inadequate policy) bears a direct causal link to any injury, Plaintiff's § 1983 claim concerning the failure to implement an adequate policy for dealing with mental health issues must fail.

Plaintiff also states that the Detention Center, Brulo, and Kwarcinski are liable for failing to have a policy that provided for Plaintiff's physical health. This claim must fail because Plaintiff has submitted no evidence indicating a deprivation that is sufficiently serious to trigger the Due Process Clause. In fact, Defendant has submitted evidence that when Plaintiff suffered what appears to have been a relatively minor[9] "puncture wound" to the chest, he was taken to the hospital. (Doc. 72, Ex. 10.) The evidence,

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[8] From July 24 through August 4, Plaintiff received Dexadrine. On August 4, the medicine log indicates that Plaintiff was switched to Atarax. (Doc. 72, Ex. 7.)

[9] The wound was the size of a pinhead and the bleeding was controlled with a band-aid. (Doc. 72, Ex. 10.)

viewed in the light most favorable to Plaintiff, would not permit a reasonable trier of fact to conclude that the allegedly inadequate policies at issue in this case represent deliberate indifference.

The Court will enter judgment in favor of the Detention Center, Brulo, and Kwarcinski on all "official capacity" due process claims listed in Count I of Plaintiff's second amended complaint.

2. "Official Capacity" Claim Against Dr. Puffenberger

Count I of Plaintiff's second amended complaint also states an official capacity claim against Dr. Mark Puffenberger. The essence of this claim is that Dr. Puffenberger, who was under contract to provide medical services for the Detention Center (Docs. 84-87, Ex. 40), was deliberately indifferent in failing to work with Defendant Brulo in creating a medical plan to care for Detention Center residents' mental and physical health needs. Plaintiff also alleges that the lack of a clear directive from Dr. Puffenberger to care for sick residents, the lack of a clear set of responsibilities for the facility nurse, and the lack of a protocol for communicating medical history to staff all amount to deliberate indifference on the part of Dr. Puffenberger. (Doc. 80 at 10-13.) Dr. Puffenberger moves for summary judgment on all claims.[10]

Although there is a question as to the scope of Dr. Puffenberger's responsibilities

[10] Plaintiff asserts that Dr. Puffenberger did not specifically move for summary judgment on the § 1983 claim contained in Count I of Plaintiff's second amended complaint. Dr. Puffenberger's motion for summary judgment asks the Court to "dismiss ***all claims*** against Mark Puffenberger, M.D. with prejudice." (Doc. 66 at 2.) As Dr. Puffenberger could not have been more clear concerning his intent to seek summary judgment as to all claims, the Court will construe this motion accordingly.

to the Detention Center, the Court assumes for the purposes of summary judgment that Dr. Puffenberger was indeed responsible for formulating policies on the subjects asserted by Plaintiff to be governed by inadequate policies.

Plaintiff states, in conclusory fashion, the Dr. Puffenberger's failure to create adequate policies regarding the medical care of Detention Center residents "led directly to the harms suffered by Plaintiff as outlined in the complaint." (Doc. 80 at 13.) Plaintiff fails to specify what "harms" were, in his view, causally linked to the allegedly deficient medical policies. The majority of the harms alleged in the complaint concern physical violence against Plaintiff by other residents. The Court concludes that the evidence submitted indicates no link between the Detention Center's medical policies and violence among residents. The Court has already held that the 12-day period during which Plaintiff may have received no medication does not rise to the level of deliberate indifference, and in any case no injury resulting from any lack of adequate mental health care has been established in evidence. Dr. Puffenberger's motion for summary judgment as to Count I of Plaintiff's second amended omplaint (Doc. 66) will be granted.

C. Count II

Count II of Plaintiff's second amended complaint claims that Defendants Brulo, Kwarcinski, and Prawdzik are liable in their individual capacity for developing inadequate policies and customs regarding youth health and safety or, alternatively, failing to adequately supervise subordinates, and thereby permitting subordinates to take actions that jeopardized youths' health and safety. *See Baker v. Monroe Twp.*, 50 F.3d 1186, 1190-91 (3d Cir. 1995) (supervisor may be held personally liable under § 1983 if he participates in the violation of constitutional rights, directs subordinates to violate

constitutional rights, or acquiesces in subordinates' violations). For the reasons stated elsewhere in this opinion,[11] the Court finds that the evidence submitted, viewed in the light most favorable to Plaintiff, does not suggest that Defendants Traver, Considine, or Parker violated Plaintiff's constitutional rights. Moreover, the evidence does not suggest that any other person under the supervision of Brulo, Kwarcinski, or Prawdzik violated Plaintiff's constitutional rights.[12] Plaintiff has cited evidence which might suggest poor communication between supervisors and staff at the Detention Center and arguable errors in judgment. Such failings, if proved, might or might not form the basis of a state law negligence claim. However, these critiques of the Detention Center's management do not suggest "deliberate indifference." Therefore, the Court will enter judgment in favor of Brulo, Kwarcinski, and Prawdzik with regard to Count II.

D. Count III

Count III of Plaintiff's second amended complaint alleges that Defendants Prawdzik, Considine, Traver, and Parker are liable under § 1983 for failing to protect Plaintiff from harm. This claim centers on these defendants' failure to intervene soon enough when violence between Plaintiff and other residents began to develop, and failure to take Plaintiff to the nurse on certain occasions.

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11 *See infra*, pp. 19-21.

12 The case of *Wendy H. by & Through Smith v. Philadelphia Dep't of Human Services*, 849 F. Supp. 367 (E.D. Pa. 1994), cited by Plaintiff, is inapplicable in the instant case because, in *Wendy H.*, the court applied the "professional judgment" standard as the yardstick for determining § 1983 liability. In this case, Plaintiff has not even argued for the application of this standard. Rather, Plaintiff has urged that the Court apply the more deferential "deliberate indifference" standard. (Doc. 82 at 5.)

Regarding defendants' failure to respond quickly enough to developing violence, this is clearly the sort of situation requiring prompt decision-making for which the "shocks the conscience" test is appropriate. *Fuentes v. Wagner*, 206 F.3d 335, 349 (3d Cir. 2000) (pre-trial detainee's substantive due process claim concerning prison staff's response to prison disturbance properly measured by "shocks the conscience" standard). There is a suggestion, supported by the deposition testimony of Gregory Kahn (Docs. 84-87, Ex. 71 at 58-62) that certain staff members at the Detention Center allowed other residents to beat up Plaintiff because he was "always messing with people and causing problems." (*Id.*) In the prison disturbance context, the Court of Appeals for the Third Circuit has held that in order to prevail on a § 1983 claim, the threshold inquiry is whether the prison official acted in good faith, or whether he acted "maliciously and sadistically to cause harm." *Fuentes*, 206 F.3d at 345. The next step in the inquiry is to determine whether the plaintiff's injuries were more than *de minimis*. *See also Johnson v. Glick*, 481 F.2d 1028, 1033 (2d Cir. 1973) ("[n]ot every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers, violates a prisoner's constitutional rights"). The Court cannot determine on summary judgment whether the injuries sustained by Plaintiff at the hands of the other residents are so minor as to be *de minimis*. They appear to consist mostly of bruises, with a small puncture wound of unknown origin. However, the evidence submitted, even if construed generously in favor of the Plaintiff, cannot support the view that the defendant staff members acted maliciously or sadistically. At worst, the evidence permits the inference that staff delayed their intervention in the hope that the disagreement would resolve itself. (Docs. 84-87,

Ex. 8-9.) Whether this is the ideal method of handling developing physical conflicts between youths is not for the Court to determine. The Court must only determine whether the conduct shocks the conscience. I hold it does not.

As for the staff's failure, on certain occasions, to take Plaintiff to the nurse following a physical altercation, the evidence does not support the conclusion that this was done in deliberate indifference to a ***serious*** medical need of Plaintiff. As has been mentioned, Plaintiff suffered primarily bruises from these altercations. While these injuries may or may not have been *de minimis*, the clearly do not amount to a serious medical problem.[13]

E. Count IV

In Count IV of Plaintiff's second amended complaint, Plaintiff alleges that Defendants Puffenberger and Yozviak should be held liable under § 1983 for failing to attend to Plaintiff's medical needs.

Regarding Defendant Yozviak, the nurse that the Detention Center, there is a claim that Yozviak acted with deliberate indifference by not properly handling the information that she possessed concerning Plaintiff's history of mental health problems. In particular, Plaintiff states that Yozviak should have contacted Plaintiff's psychiatrist and informed the staff about Plaintiff's mental health problems. As has been mentioned, under *Estelle*, "deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain'." *Id.* at 104. Plaintiff has not submitted evidence that would permit the conclusion that Yozviak's omissions are causally linked to

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[13] See *supra*, pp. 14-15.

any injury sustained by Plaintiff, let alone that there was a "wanton" infliction of pain. This aspect of his claim against Yozviak therefore fails.

Plaintiff also claims that Yozviak took no action when she learned on July 23, 1999 that Plaintiff had bruises from being beaten up by other youths. The Court is unsure what action Plaintiff faults the nurse for not taking. In any event, the evidence does not permit an inference that Yozviak's inaction in response to learning of bruises on Plaintiff's arms was itself a constitutional violation, or led to a constitutional violation. Judgment will be entered in favor of Defendant Yozviak regarding the claim for failure-to-treat contained in Count IV.

Count IV also contains a claim against Dr. Puffenberger. The Court will accept for summary judgment purposes the contention that Dr. Puffenberger's obligations with regard to Detention Center residents were more extensive than simply administering a physical at the beginning of residents' confinement. (Doc. 80 at 3-4.) It appears that Plaintiff argues that Dr. Puffenberger, by failing to properly treat Plaintiff's mental health problems at the beginning of Plaintiff's residency at the Detention Center, caused Plaintiff to provoke other residents and, as a result, become victimized by them. (Doc. 80 at 4.) Plaintiff contends that he would "likely have been spared the victimization he endured as his mental health problems escalated at the detention center." (*Id.*) This is speculation and need not be credited by the Court, even on summary judgment. *Ridgewood*, 172 F.3d at 252. Furthermore, in the failure-to-treat context, a plaintiff must demonstrate that the defendant deliberately deprived the plaintiff of adequate medical care despite the defendant's knowledge of a substantial risk of serious harm. *Daniels v. Delaware*, 120 F. Supp. 2d 411, 426-27 (D. Del. 2000). As has been stated, mere negligence in

diagnosing or treating a medical complaint does not constitute deliberate indifference. *See id.* Plaintiff has submitted evidence that might support a claim of negligence, but Plaintiff simply has not cited evidence suggesting Puffenberger's subjective culpability, which is necessary for a § 1983 failure-to-treat claim. The Court will enter judgment in Puffenberger's favor regarding the claim contained in Count IV.

II. **State Law Tort Claims**

The remaining claims contained in Plaintiff's second amended complaint are as follows. Count V and VI are state law negligence claims concerning various Defendants' failure to protect and treat Plaintiff. Count VII is a negligent infliction of emotional distress claim. Count VIII is an intentional infliction of emotional distress claim. These are all state law claims.

The basis for the Court's original jurisdiction were the federal claims arising under 42 U.S.C. § 1983. The Court will enter judgment on all these claims, and as a result, the claims supporting federal jurisdiction will be gone. The Court of Appeals for the Third Circuit has held that where, as here, the claim supporting a federal court's original jurisdiction is dismissed prior to trial, the district court "must decline to decide the pendent state claims unless considerations of judicial economy, convenience, and fairness to the parties provide an affirmative justification for doing so." *Borough of W. Mifflin v. Lancaster*, 45 F.3d 780, 788 (3d Cir. 1995).

In this instance, the Court sees no compelling reason to maintain jurisdiction over Plaintiff's state law claims. The Court will therefore dismiss Counts V through VIII, the state law claims, without prejudice.

CONCLUSION

Plaintiff has not submitted evidence that, construed with all inferences taken in Plaintiff's favor, supports a conclusion that the Defendants in this action are liable under § 1983 for violation of Plaintiff's substantive due process rights. The Court will therefore grant Defendants' motion for summary judgment with regard to Counts I through IV. The Court will dismiss Counts V through VIII without prejudice, as there is no affirmative reason for the Court to maintain jurisdiction over these pendent state law claims.

An appropriate order follows.

June 30, 2003
Date

A. Richard Caputo
United States District Judge

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SCRANTON
JUN 30 2003
PER
DEPUTY CLERK

CERTIFICATE OF SERVICE

I hereby certify that I am, this 14th day of October, 2003, serving this Brief for the Appellant upon the persons indicated below and in the manners indicated below:

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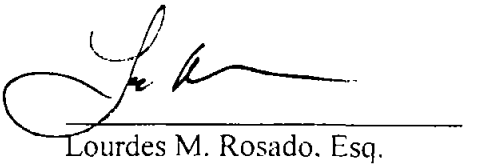

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