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

KALILAH BRANTLEY,	**:**	**CIVIL ACTION**
Plaintiff,	**:**	
	:	
v.	**:**	
	:	
AMERICAN AIRLINES, INC.,	**:**	**NO. 16-3540**
Defendant.	**:**	

MEMORANDUM

PRATTER, J. JULY 25, 2017

Kalilah Brantley contends that her employer, American Airlines, negligently supervised a co-worker, Darryl Strickland, who, after sexually assaulting her at her home, assaulted her at work. American Airlines filed a motion for summary judgment, claiming that Ms. Brantley cannot show that American Airlines proximately caused the assault upon her by Mr. Strickland at work. American Airlines' motion does not meet the summary judgment bar and must, therefore, be denied.

I. Background

Ms. Brantley is a customer service agent for American Airlines at the Philadelphia International Airport. Between August and December of 2015, she worked at the Terminal B/C ticket counter. Darryl Strickland was also employed by American Airlines at the airport. He primarily worked in an international terminal, but he regularly picked up extra shifts and worked in other areas of the airport, including at the domestic Terminal B/C ticket counter.

Ms. Brantley and Mr. Strickland met at work and began a romantic relationship. However, on August 21, 2015, Ms. Brantley invited Mr. Strickland to her home, and he sexually assaulted her. She immediately drove herself to the emergency room and called the police. On August 25, 2015, she informed American Airlines' Human Resources department about the

events. The next day Mr. Strickland was criminally charged for assault. Ms. Brantley also obtained a Protection from Abuse Order (PFA) prohibiting Mr. Strickland from having any interaction with her outside of work. She gave a copy of the Order to American Airlines. On September 3, 2015, after a hearing, the PFA was amended to specifically call for no contact between the two at the work place, and Ms. Brantley again gave a copy of the amended Order to American Airlines. The copy she gave them, however, was folded before copying in such a way that the amended language barring contact between the two at work was obscured.

Despite being timely informed of the assault, of the PFA, and of the criminal charges, and despite the Airline's Vice President Cedric Rockamore instructing that an investigation into Mr. Strickland be conducted, American Airlines performed no investigation beyond an attempt to speak with Mr. Strickland and others involved without actually ever speaking to them, and took no action with respect to Mr. Strickland's employment or restricting his movements within American Airlines locations at the airport.

On August 28, 2015, Mr. Strickland changed his shift and was assigned to the domestic Terminal B/C at the airport (the same terminal where Ms. Brantley worked) for a shift partially overlapping Ms. Brantley's shift. Because of this, Ms. Brantley's supervisor directed her to leave her work area to avoid Mr. Strickland for the remainder of his shift. Ms. Brantley promptly reported the situation to the Airline's Human Resources department. On November 4, 2015, when Ms. Brantley arrived at work, she heard from a co-worker that Mr. Strickland had just been in the area near the B/C ticket counter. She spoke to her supervisor about this "near-miss" that same day.

On November 24, 2015, Ms. Brantley was scheduled to work in her usual area at the B/C ticket counter, but when she arrived for work, the employees' timeclock at that counter was not

working. She walked to the A-East ticket counter to clock in.[1] While she was using the mirror in the employee break room where the time clock is located, Mr. Strickland appeared in the same break room. He stared, cat-called, and whistled at her, refusing to leave when she repeatedly told him to get away and causing her fear and emotional distress. Ms. Brantley reported this encounter to Human Resources. On December 16, 2016, Mr. Strickland's employment was terminated for unrelated reasons.

After the Court dismissed an assault and battery count against American Airlines earlier in the case, Ms. Brantley's sole remaining count against American Airlines is for negligent hiring and supervision. American Airlines moves for summary judgment on that claim, arguing that Ms. Brantley cannot prove that it proximately caused the assault in the A-East break room.[2]

LEGAL STANDARD

A court shall grant a motion for summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). An issue is "genuine" if there is a sufficient evidentiary basis on which a reasonable jury could return a verdict for the non-moving party. *Kaucher v. Cnty. of Bucks*, 455 F.3d 418, 423 (3d Cir. 2006) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). A factual dispute is "material" if it might affect the outcome of the case under governing law. *Id.* (citing *Anderson*, 477 U.S. at 248). Under Rule 56, the Court must view the evidence presented on the motion in the light most favorable to the non-moving party. *See*

[1] The A-East ticket counter is about a 10-minute walk from the B/C ticket counter. There are at least two other time clocks at gates in the B and C terminals that are also about a 10-minute walk from the B/C ticket counter, but no time clocks are closer than the one at A-East. A-East is not where Mr. Strickland was normally assigned to work.

[2] There was some uncertainty as to whether Ms. Brantley was seeking to hold American Airlines responsible for the "near-miss" incidents that occurred before the November 2015 break room incident; however, Ms. Brantley has clarified that she only takes issue with the break room incident.

Anderson, 477 U.S. at 255. However, "[u]nsupported assertions, conclusory allegations, or mere suspicions are insufficient to overcome a motion for summary judgment." *Betts v. New Castle Youth Dev. Ctr.*, 621 F.3d 249, 252 (3d Cir. 2010).

The movant (here, American Airlines) bears the initial responsibility for informing the Court of the basis for the motion for summary judgment and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Where the non-moving party bears the burden of proof on a particular issue, the moving party's initial burden can be met simply by "pointing out to the district court that there is an absence of evidence to support the nonmoving party's case." *Id.* at 325. After the moving party has met the initial burden, the non-moving party must set forth specific facts showing that there is a genuinely disputed factual issue for trial by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations . . . , admissions, interrogatory answers, or other materials" or by "showing that the materials cited do not establish the absence or presence of a genuine dispute." Fed. R. Civ. P. 56(c). Summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322.

DISCUSSION

American Airlines claims that Ms. Brantley cannot prove that the Airline proximately caused the assault in the break room and that therefore it is entitled to summary judgment. "To recover for negligent supervision under Pennsylvania law, a plaintiff must prove that [her] loss resulted from (1) a failure to exercise ordinary care to prevent an intentional harm by an

employee acting outside the scope of his employment, (2) that is committed on the employer's premises, (3) when the employer knows or has reason to know of the necessity and ability to control the employee." *Belmont v. MB Inv. Partners, Inc.*, 708 F.3d 470, 487–88 (3d Cir. 2013). American Airlines argues that the break room in which the encounter occurred was not near where either Ms. Brantley or Mr. Strickland normally worked – Ms. Brantley went to that break room on that day to clock-in because the time clock in her terminal was not working, and Mr. Strickland had picked up an extra shift. Therefore, American Airlines argues, no one could have foreseen this chance encounter between the two employees. It emphasizes that when Mr. Strickland was in the same terminal as Ms. Brantley in the past, Ms. Brantley's supervisor appropriately took steps to make sure that the two did not come into contact with one another. American Airlines also argues that Ms. Brantley failed to explicitly notify the Airline that the PFA had been amended to prohibit workplace contact, failed to check to see if and where Mr. Strickland was working before leaving the B/C ticketing counter area, and failed to notify anyone that she was going to the A-East ticketing counter to check in.

Ms. Brantley counters that because American Airlines knew about the original incident and the PFA, as well as other incidents involving Mr. Strickland, it could have and should have investigated Mr. Strickland and taken further steps to make sure that the two employees would not accidentally come into contact with one another, including, at the very least, speaking to Mr. Strickland about the issue. She argues that "accidental" contact, like the November 24 incident was foreseeable, given the liberal policies American Airlines had for shift swapping and picking up extra shifts. She claims that there would have been no way for Ms. Brantley to know where or when Mr. Strickland was working, especially when it came to extra shifts, but that American

Airlines certainly had this information and could have used it to prevent any encounters between the two employees.[3]

The Court finds that genuine issues of material fact prevent the entry of summary judgment in this case. This is not like the situation in *Dolfman v. Cedar Fair, L.P.*, 648 Fed. App'x. 285 (3d Cir. 2016), a case cited by American Airlines, in which the Third Circuit Court of Appeals upheld a district court's granting summary judgment in favor of an employer who had booked a hotel room for an employee on a busy street and was then sued after the employee was killed when attempting to walk across a highway near the hotel. American Airlines argues that *Dolfman* is similar to this case in that, in both situations, independent decisions made by the employee led to the harm and otherwise. However, *Dolfman* differs significantly from this case in the degree of control the employer exerted over the factors that eventually led to the harm. In *Dolfman*, the employer's supposed negligence was far removed from the eventual harm, in that the employer had no control over the busy highway, the people driving on it, or the employee's decision to attempt to cross the highway before dawn for personal reasons. Here, although American Airlines may not have had any direct input into Ms. Brantley's choice on a specific day to clock in at a different terminal, American Airlines did supervise both employees, oversee and have knowledge of their schedules, and have the ability to take direct actions to prevent or at least minimize the risk of chance encounters, such as preventing scheduling overlaps, providing warnings to Ms. Brantley about Mr. Strickland's schedule, or otherwise exerting control over the

[3] Ms. Brantley also suggests that American Airlines simply should have fired or at least suspended Mr. Strickland while the criminal charges against him were pending. While such an action could have prevented any on site encounters between Mr. Strickland and Ms. Brantley, the Court takes no position as to whether such a measure was or should be required under the circumstances of this case.

workplace it operated.[4] Ms. Brantley was clearly about her employer's business when she went to the break room, whereas the circumstances of the employee's choice of locations (or reasons) for crossing the street had nothing to do with her employment.

Especially given two near-misses, a jury could find that it was reasonably foreseeable that, absent specific intervention, an "accidental" encounter between two employees was likely to occur. It will be up to a jury, therefore, to determine which factors weighed more heavily in bringing about the eventual harm to Ms. Brantley.

CONCLUSION

For the foregoing reason, the Court will deny American Airlines' motion for summary judgment. An appropriate Order follows.

BY THE COURT:

S/Gene E.K. Pratter
GENE E.K. PRATTER
United States District Judge

[4] *Mack v. Mid-Atlantic, Inc.*, 511 F. Supp. 2d 539 (E.D. Pa. 2007), likewise differs from this case in important respects. In that case, after a tow truck operator failed to transport the plaintiff from a traffic accident, the plaintiff decided to walk on icy sidewalks, fell, and sued the tow truck operator. While the tow truck operator could have prevented the harm to the plaintiff, that defendant did not control the weather, the condition of the sidewalks, or the plaintiff's choice to take a dangerous route, whereas American Airlines had control over many of the factors that led to the encounter between Mr. Strickland and Ms. Brantley.