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

JOHN BRADLEY PETERS, SR.,	)	
	)	
Plaintiff,	)	**Civil Action No. 16-260**
	)	
v.	)	**District Judge Arthur J. Schwab**
	)	**Magistrate Judge Lisa Pupo Lenihan**
JASON BROWN, KEVIN BICKLE, WILLIAM GALLAGHER, DR. HOSNY MIKHAIK, BROOKVILLE HOSPITAL, OFFICER SPADER AND JEFFERSON COUNTY JAIL,	)	
	)	
Defendants.	)	

REPORT AND RECOMMENDATION

I. RECOMMENDATION

It is respectfully recommended that the Motion to Dismiss filed by Defendants Anthony Spader and Jefferson County Jail (ECF No. 15) be granted.

II. REPORT

A. RELEVANT FACTS

This *pro* se civil rights action arises out of the arrest, medical examination, and detention of Plaintiff John Bradley Peters, Sr. Mr. Peters filed his Complaint on March 7, 2016 (ECF No. 1) alleging that the Defendants violated his civil rights in violation of the Fifth, Eighth, and Fourteenth amendments to the United States Constitution, and 42 U.S.C. § 1983. Defendants Jefferson County Jail and Officer Anthony Spader filed their motion to dismiss (ECF No. 15) with Brief in Support (ECF No. 16) on December 5, 2016. Mr. Peters filed his response on January 4, 2017. (ECF No. 27.)

The events alleged in the Complain began on the evening of March 5, 2014 at Mr. Peters' home, continued into the early hours of March 6, 2014 at Brookville Hospital, and ended in the

afternoon of March 6, 2014, when he was released from the Jefferson County Jail. Compl. at 2, 6, 13.[1] Mr. Peters alleges that on the evening of March 5, 2014, after spending the afternoon and early evening drinking with his wife, his wife called 911 because Mr. Peters threatened to shoot her wife with his rifle. *Id.* at 8-9. Borough of Brookville Police Officers Kevin Bickle and William Gallagher responded to the call. *Id.* at 7. Mrs. Peters told the officers that she had witnessed her husband tumbling backwards down the stairs, and was unable to stand or sit in a chair without falling. *Id.* at 8-9. She stated that Mr. Peters appeared delirious over the next hour culminating with his threat to shoot her. *Id.* at 9.

The officers told Mr. Peters he was under arrest and asked him to put on pants and to accompany the officers. *Id.* Mr. Peters had difficulty standing and required assistance from one of his sons to get dressed, and required the assistance of all three of his sons to walk to the front door. *Id.* at 9-10. Mr. Peters broke free from his sons at the front door and made his way back to the living room, hitting Officer Bickle in the head in the process. *Id.* at 10. Officer Bickle caught up with Mr. Peters and hit him on the back of the head causing him to fall to the floor. *Id.*at 10. Mr. Peters' son assisted the officers in restraining Mr. Peters while handcuffs and leg restraints were placed on him. *Id.* At some time during these events the Chief of Police of the Borough of Brookville, Jason Brown, arrived at the scene. Mr. Peters alleges that Chief Brown physically restrained Mr. Peters on the ground for approximately 23 minutes before he was transported by ambulance to the Brookville Hospital. *Id.* at 6.

Mr. Peters was treated at the emergency department at Brookville Hospital by Doctor Hosny Mikhaik. *Id.* at 12. Mr. Peters alleges that Dr. Mikhaik refused to request information

[1] Citations to the Complaint are to the page numbers identified on the ECF pleading, which allows for a more precise citation. Mr. Peters' pagination begins on his supplemental pages and he assigns one paragraph number for each Defendant's allegations.

necessary to make an informed medical decision, withdrew blood from Mr. Peters without his consent, ignored signs of stroke, and released Mr. Peters from the hospital with a damaged spine, organs, and brain. *Id.* Mr. Peters was then transported to the Brookville County Jail.

At the County Jail, Mr. Peters, who could barely stand, repeatedly requested medical care from Officer Anthony Spader. *Id.* at 13. Officer Spader told Mr. Peters that there were no medical personnel to see him at that time and that Mr. Peters had just arrived after being seen by a doctor at the hospital. *Id.* When Officer Spader brought breakfast to Mr. Peters he again requested medical care and Officer Spader did not respond. *Id.*

Later, Officer Spader told Mr. Peters that he had to stand up but Mr. Peters was unable to stand and again he requested medical care. *Id.* at 14. Officer Spader did not respond. *Id.* Mr. Peters again asked for medical care when Officer Spader brought lunch, and Officer Spader told him that once he had been processed into the system he could be seen by medical personal. *Id.* After lunch, Officer Spader helped Mr. Peters walk in order to be processed. *Id.* Officer Spader told Mr. Peters he could see medical personnel after he was processed. *Id.* When the paperwork was completed Mr. Peters was escorted back to his cell to await medical care. *Id.* at 15. Shortly thereafter Officer Spader informed Mr. Peters that he had been bailed out and was released from the jail. *Id.*

Mr. Peters alleges that Officer Spader and the Jefferson County Jail were deliberately indifferent to his serious medical needs. Defendant Jefferson County Jail and Officer Anthony Spader move to dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. (ECF No. 15.)

B. LEGAL STANDARD

Recently, the United States Court of Appeals for the Third Circuit aptly summarized the standard to be applied in deciding motions to dismiss filed pursuant to Rule 12(b)(6):

> Under the "notice pleading" standard embodied in Rule 8 of the Federal Rules of Civil Procedure, a plaintiff must come forward with "a short and plain statement of the claim showing that the pleader is entitled to relief." As explicated in *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), a claimant must state a "plausible" claim for relief, and "[a] claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Although "[f]actual allegations must be enough to raise a right to relief above the speculative level," *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007), a plaintiff "need only put forth allegations that raise a reasonable expectation that discovery will reveal evidence of the necessary element." *Fowler[v. UPMC Shadyside*, 578 F.3d [203,][] 213 [(3d Cir. 2009)] (quotation marks and citations omitted); *see also Covington v. Int'l Ass'n of Approved Basketball Officials*, 710 F.3d 114, 117–18 (3d Cir.2013).

Thompson v. Real Estate Mortg. Network, 748 F.3d 142, 147 (3d Cir. 2014).

Importantly, the Court must liberally construe the factual allegations of the Complaint because pleadings filed by pro se plaintiffs are held to a less stringent standard than formal pleadings drafted by lawyers. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Therefore, if the Court "can reasonably read [the] pleadings to state a valid claim on which [plaintiff] could prevail, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or [plaintiff's] unfamiliarity with pleading requirements." *Wilberger v. Ziegler*, No. 08-54, 2009 WL 734728, at *3 (W.D. Pa. March 19, 2009) (*citing Boag v. MacDougall*, 454 U.S. 364 (1982) (*per curiam*)). The law is clear, however, that a plaintiff's pro se status will not excuse compliance with COM requirements. *See Hodge v. United States Dep't of Justice*, 372 F. App'x 264, 267 (3d Cir. 2010); *Iwanejko v. Cohen & Grigsby, P.C.*, 249 F. App'x 938, 944 (3d Cir. 2007).

Nonetheless, a court need not credit bald assertions, unwarranted inferences, or legal conclusions cast in the form of factual averments. *Morse v. Lower Merion School District*, 132 F.3d 902, 906, n. 8 (3d Cir.1997). The primary question in deciding a motion to dismiss is not whether the Plaintiff will ultimately prevail, but rather whether he or she is entitled to offer evidence to establish the facts alleged in the complaint. *Maio v. Aetna*, 221 F.3d 472, 482 (3d Cir.2000). The purpose of a motion to dismiss is to "streamline [ ] litigation by dispensing with needless discovery and factfinding." *Neitzke v. Williams*, 490 U.S. 319, 326–327, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989).

Finally, if the court decides to grant a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6), the court must next decide whether leave to amend the complaint must be granted. The Court of Appeals has "instructed that if a complaint is vulnerable to 12(b)(6) dismissal, a district court must permit a curative amendment, unless an amendment would be inequitable or futile." *Phillips v. Cnty of Allegheny*, 515 F.3d 224, 236 (3d Cir.2008) (*citing Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d Cir.2002)).

C. ANALYSIS

The Jefferson County Jail argues that it is not subject to suit under 42 U.S.C. § 1983 because it is not a "person." Officer Spader argues for dismissal because he relied on the judgment of medical professionals who examined Mr. Peters and released him to the jail.

1. JEFFERSON COUNTY JAIL

Defendant is correct that the Jefferson County Jail is not amenable to suit because it is not a "person" under 42 U.S.C. § 1983. *Smith v. Indiana County Jail*, No. CIV.A. 12-728, 2013 WL

425144, at *3 (W.D. Pa. Feb. 4, 2013) ("prison facilities are not 'persons' for the purpose of § 1983 liability"); *see also Ruff v. Health Care Adm'r*, 441 F. App'x 843, 845 (3d Cir. 2011) (prison "entities are not 'persons' under § 1983"). Accordingly, the Motion to Dismiss claims against the Jefferson County Jail should be granted.

Mr. Peters implicitly concedes that this is true by indicating that at the time he filed the Complaint he did not know the name of the Warden of the Jefferson County Jail, and claims that the Court has "remedied" this mistake. Pl. Resp. at 4. To clarify, in response to Mr. Peters' Motion for Clarification of Defendants of Record (ECF No. 21) the Court permitted Mr. Peters the opportunity to "file an Amended Complaint setting forth specific allegations against [the Warden] if he so chooses," (Text Order, Dec, 27, 2016, ECF No. 26). No Amended Complaint has been filed as of the date of this Report. In addition, as discussed below, because the Court finds that there is no viable Eighth Amendment claim asserted in the Complaint against Officer Spader, there can be no Eighth Amendment claim against the Warden of the Jail.

2. OFFICER SPADER

Mr. Peters alleges that Officer Spader was deliberately indifferent to his serious medical needs in violation of the Eighth Amendment by refusing to provide him with medical care while he was housed as a pretrial detainee at the Jefferson County Jail from the morning of March 6, 2014 until he was released from custody after lunch.

In the medical context, a constitutional violation under the Eighth Amendment occurs only when prison officials are deliberately indifferent to serious medical needs. *Estelle v. Gamble*, 429 U.S. 97 (1976) . The "Fourteenth Amendment affords pretrial detainees protections" under the Eighth Amendment using the same standards pertaining to "prisoners'

claims of inadequate medical care" under *Estelle*. *Natale v. Camden County Corr. Facility*, 318 F.3d 575, 581 (3d Cir. 2003); *see also Gunter v. Twp. of Lumberton*, 535 F. App'x 144, 149 (3d Cir. 2013) ("Deprivation of medical care to arrestees violates their Fourteenth Amendment right to due process if it constitutes deliberate indifference to medical needs"). The standard is two-pronged, "[i]t requires deliberate indifference on the part of prison officials and it requires that the [pretrial detainee's] medical needs be serious." *West v. Keve*, 571 F.2d 158, 161 (3d Cir. 1978).

A serious medical need is "one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention." *Monmouth County Corr'al. Inst. Inmates v. Lanzaro*, 834 F.2d 326, 347 (3d Cir. 1987). Deliberate indifference may be shown in a variety of ways, including the following:

- knowledge of the need for medical care and an intentional refusal to provide such care (*Durmer v. O'Carroll*, 991 F.2d 64, 68 (3d Cir. 1993) (citing *Lanzaro*, 834 F.2d at 346));
- delaying necessary medical treatment for non-medical reasons (*Lanzaro*, 834 F.2d at 346; *Durmer*, 991F.2d at 68);
- denial of reasonable requests for medical treatment, where the " denial exposes the inmate 'to undue suffering or the threat of tangible residual injury'" (*Lanzaro*, 834 F.2d at 346 (quoting *Westlake v. Lucas*, 537 F.2d 857, 860 (6th Cir.1976)); *Durmer*, 991F.2d at 68 n.11);
- denial of prescribed medical treatment or denial of access to medical care to evaluate the need for treatment (*Lanzaro*, 834 F.2d at 346; *Durmer*, 991F.2d at 68); and
- "persistent conduct in the face of resultant pain and risk of permanent injury" (*White v. Napoleon*, 897 F.2d 103, 109 (3d Cir. 1990)).

Deliberate indifference is generally not found when some level of medical care has been offered to the inmate. *Clark v. Doe*, 2000 WL 1522855, at *2 (E.D. Pa. 2000) ("[C]ourts have

consistently rejected Eighth Amendment claims where an inmate has received some level of medical care"). There is necessarily a distinction between a case in which the prisoner claims a complete denial of medical treatment and one where the prisoner has received some medical attention and the dispute is over the adequacy of the treatment. *United States ex rel. Walker v. Fayette County*, 599 F.2d 533, 575 n.2 (3d Cir. 1979). "Mere disagreements over medical judgment" do not rise to the level of an Eighth Amendment violation. *White v. Napoleon*, 987 F.2d 103, 110 (3d Cir. 1990). In addition, "'a non-medical prison official' cannot 'be charge[d] with the Eighth Amendment scienter requirement of deliberate indifference' when the 'prisoner is under the care of medical experts' and the official does not have 'a reason to believe (or actual knowledge) that prison doctors or their assistants are mistreating (or not treating) a prisoner.'" *Pearson v. Prison Health Serv.*, 850 F.3d 526, 543 (3d Cir. 2017) (*quoting Spruill v. Gillis*, 372 F.3d 218, 236 (3d Cir. 2004)).

Viewing the Complaint in a light most favorable to Mr. Peters he alleges that his medical need was so obvious that Officer Spader should have easily recognized the need for medical treatment. His medical need was demonstrated through his obvious inability to stand or walk without assistance coupled with his repeated requests to Officer Spader for medical care. He further alleges that deliberate indifference is shown by Officer Spader being aware that medical care was needed but refusing to provide it; delaying medical care while Mr. Peters was being processed; and denying medical care to evaluate the obvious continued need for treatment, even though Mr. Peters just came from the hospital.

Officer Spader moves to dismiss the claim arguing that Mr. Peters did not have a "serious medical need" when he arrived at the jail on March 6, 2014, through the time he was released.

Officer Spader points out that Mr. Peters had just been discharged from the hospital after having been examined by a doctor, undergone a CAT scan, and released by the doctor with approval to be taken to the jail. Mr. Peters was not discharged with instructions indicating that he had a diagnosed condition that required medical care during the time he was at the jail. Officer Spader also argues that the claim against him should be dismissed because Mr. Peters is unable to establish deliberate indifference because Mr. Peters had arrived at the jail having just been examined by a physician, given a CAT scan, and released. Officer Spader asserts that he was not in a position to second-guess the physician's medical judgment.

Officer Spader cannot be charged with deliberate indifference for withholding adequate medical care from Mr. Peters where he had no reason to believe that that Mr. Peters was mistreated (or not treated) at the hospital. Here, Officer Spader knew that Mr. Peters had just been treated by a physician at the hospital prior to arriving at the jail. Although Mr. Peters had trouble standing and walking while he was in the jail, a physician had rendered a medical judgment that he could be released from the hospital in that condition. Therefore Officer Spader had no reason to believe that the hospital physician mistreated or failed to treat Mr. Peters. In other words, Officer Spader had no reason to second-guess the physician's determination after examination that Mr. Peters' condition permitted discharge to the jail. *Spruill*, 372 F.3d at 236 ("[i]f a prisoner is under the care of medical experts . . . a non-medical prison official will generally be justified in believing that the prisoner is in capable hands").

Mr. Peters was only at the jail, and interacting with Officer Spader, for a short duration. He received breakfast and then lunch, and was released on bail shortly after lunch indicating that his release was in the afternoon. During this time Officer Spader did not refuse to provide

medical care. He explained to Mr. Peters that he had just arrived from being treated at the hospital and thus he could not send him back there, He told him that there was no medical personnel in the jail at the time he requested care. He also told Mr. Peters he would provide him with medical care after he was processed, but Mr. Peters was released first. Officer Spader's conduct cannot amount to deliberate indifference given the short amount of time Mr. Peters was in the jail coupled with the fact that a physician had recently examined Mr. Peters. Thus, even if the medical treatment Mr. Peters received at the hospital was deficient, Mr. Peters is unable to show that Officer Spader had knowledge or reason to believe that Mr. Peters was mistreated or not treated at the hospital. *Pearson*, 850 F.3d at 543.

Accordingly, the Complaint fails to state an Eighth Amendment claim against Officer Spader. Furthermore, because the claim should be dismissed against Officer Spader no Eighth Amendment claim is able to be asserted against the Warden. The Court further finds that the above circumstances demonstrate that amendment of Mr. Peters' Complaint to assert an Eighth Amendment claim against either Officer Spader or the Warden of the Jail would be futile.

III. CONCLUSION

For the foregoing reasons it is respectfully recommended that that the Motion to Dismiss filed by Officer Anthony Spader and the Jefferson County Jail (ECF No. 15) be granted. It is further recommended that leave to amend the complaint not be granted.

In accordance with the Magistrate Judges act, 28 U.S.C. § 636(b)(1)(B) and (C) , and Rule 72.D.2 of the Local Rules of Court, the parties are allowed fourteen (14) days from the date of service of a copy of this Report and Recommendation to file objections. Any party opposing

the objections shall have fourteen (14) days from the date of service of objections to respond thereto. Failure to file timely objections will constitute a waiver of any appellate rights.

Dated: July 19, 2017

BY THE COURT

LISA PUPO LENIHAN
United States Magistrate Judge