IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

CHRISTOPHER M. GILMORE, Plaintiff, v. ALEJANDRO BRISENO, DAVID YUSIF, MICHAEL DOWNEY, TIMOTHY F. BUKOWSKI, and OFFICER KOERNER, each in his individual and official capacities, and TOM DART, in his official capacity, Defendants.	)	Case No. 15 C 02963 Judge Joan H. Lefkow

ORDER

The motion of defendants Timothy Bukowski, Michael Downey, and Todd Koerner for summary judgment (dkt. 53) is granted. Judgment entered in favor of defendants Bukowski, Downey, and Koerner, and these defendants are terminated from the case. The case will be called for a status hearing on September 19, 2017 at 11:00 a.m., at which time the parties shall be prepared to report on possible settlement of the case and to set a trial date on the remaining claims. See Statement.[1]

STATEMENT

I. Background[2]

Christopher M. Gilmore filed suit against several individuals, including Timothy Bukowski, Michael Downey, and Todd Koerner, who are employed by Jerome Combs Detention

[1] The court's jurisdiction rests on 28 U.S.C. § 1331, and venue is proper pursuant to 28 U.S.C. § 1391.

[2] Unless otherwise noted, the facts in this section are taken from the parties' Local Rule 56.1 statements and are construed in the light most favorable to the non-moving party. The court will address many but not all of the factual allegations in the parties' submissions, as the court is "not bound to discuss in detail every single factual allegation put forth at the summary judgment stage." *Omnicare, Inc.* v. *UnitedHealth Grp., Inc.*, 629 F.3d 697, 704 (7th Cir. 2011) (citation omitted). In accordance with its regular practice, the court has considered the parties' objections to the statements of fact and includes in this background only those portions of the statements and responses that are appropriately supported and relevant to the resolution of this motion. Any facts that are not controverted as required by Local Rule 56.1 are deemed admitted.

Center (JCDC), alleging violations of his constitutional rights protected by 42 U.S.C. § 1983. This suit arises out of an incident that took place on December 28, 2012 at the Cook County Department of Corrections (Cook County Jail), where Gilmore was being detained pending disposition of a charge of robbery. Gilmore alleges that, following a fight that he claims not to have been a participant in, officers at the facility used excessive force against him. Following the incident, Gilmore first filed a grievance in accordance with the facility's administrative procedures. He filed a federal lawsuit on February 25, 2013.[3]

On June 6, 2013, Gilmore was transferred from Cook County Jail to the Jerome Combs Detention Center (JCDC) in Kankakee County. He remained there until he was transferred back to Cook County Jail on August 8, 2013. On July 6, 2013, Gilmore spoke with Koerner, an officer at JCDC, and asked to use the law library for legal research in preparation for his pending state criminal case. Koerner told Gilmore that he would look into the request to perform legal research but that JCDC did not have a stand-alone law library.[4] Gilmore asked to file a grievance form, which Koerner supplied to him. Gilmore stated in his grievance that he was "denied access to a law library [to] provide legal services for [his] state case." (Dkt. 59 ¶ 38.) Gilmore returned the grievance form to Koerner, who signed off that he had received it and passed it along to his supervisors. Gilmore did not speak to Koerner regarding access to legal materials again.

On July 9, 2013, Gilmore received a response to his grievance from non-party James Stevenson, JCDC Classification Director, which informed him that JCDC "do[es] not have a law library, but we do provided legal resources for federal inmates." *Id.* ¶ 40. Stevenson testified that his statement regarding the legal resources available for federal, rather than state, inmates was due to his mistaken belief that Gilmore was a federal inmate. Additionally, Gilmore testified that he spoke with another non-party officer after receiving his grievance response, and that officer told him the housing unit had a computer for federal inmates. Gilmore did not speak with any other officers or administrators regarding his request for legal materials after he received his grievance response.

Gilmore alleges that defendants in Kankakee County, namely Sheriff Bukowski, Chief of Corrections Downey, and Officer Koerner, retaliated against him for filing the excessive force grievance and civil suit by depriving him of access to legal materials. Bukowski, Downey, and Koerner have moved for summary judgment.

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[3] Gilmore does not identify this case in his Amended Complaint. The court's docket, however, reflects that Gilmore filed case no.13 C 1264 (N.D. Ill.) concerning this incident on February 15, 2015, which he later moved to dismiss so he could exhaust his administrative remedies. (*Id.* at dkt. 74). The case was dismissed without prejudice on January 29, 2015 (*id.* at dkt. 76) and refiled as the pending case on April 3, 2015.

[4] Rather than having a physical law library within the facility, each housing unit contained several law books and a counseling room with a legal computer. Inmates were informed of these resources and how to access them in the inmate handbook they received when they were booked into JCDC.

II. Legal Standard

Summary judgment obviates the need for a trial where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). A genuine issue of material fact exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). To determine whether any genuine fact issue exists, the court must pierce the pleadings and assess the proof as presented in depositions, answers to interrogatories, admissions, and affidavits that are part of the record. Fed. R. Civ. P. 56(c). In doing so, the court must view the facts in the light most favorable to the non-moving party and draw all reasonable inferences in that party's favor. *Scott* v. *Harris*, 550 U.S. 372, 378, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007).

The party seeking summary judgment bears the initial burden of proving there is no genuine issue of material fact. *Celotex Corp.* v. *Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). In response, "a party who bears the burden of proof on a particular issue may not rest on its pleadings, but must affirmatively demonstrate, by specific factual allegations, that there is a genuine issue of material fact which requires trial." *Day* v. *N. Ind. Pub. Serv. Co.*, 987 F. Supp. 1105, 1109 (N.D. Ind. 1997); *see also Insolia* v. *Philip Morris, Inc.*, 216 F.3d 596, 598 (7th Cir. 2000). If a claim or defense is factually unsupported, it should be disposed of on summary judgment. *Celotex*, 477 U.S. at 323–24.

III. Analysis

Gilmore concedes that summary judgment is appropriate as to Bukowski and Downey and challenges only Koerner's motion. (Dkt. 58 at 1, n.1.) Additionally, Gilmore failed to respond to defendants' argument that he has not made out a case for *Monell* liability for the Kankakee County defendants because he has not pointed to evidence of a policy or practice of retaliatory denial of access at JCDC. Therefore, Gilmore's argument is deemed abandoned. *See Palmer* v. *Marion County*, 327 F.3d 588, 597–98 (7th Cir. 2003). Accordingly, the court grants summary judgment in favor of all movants in their official capacity, and to Bukowski and Downey in their individual capacities. The court now addresses the motion for summary judgment as it relates to Koerner in his individual capacity.

Gilmore alleges that the Cook County defendants transferred him to JCDC in retaliation for filing the excessive force grievance and lawsuit and that, once at JCDC, Koerner further retaliated by "den[ying] him access to a law library and/or other legal resources.". (Dkt. 55 at ¶¶ 1–2.) To prevail on his retaliation claim against Koerner, Gilmore must establish that "(1) he engaged in activity protected by the First Amendment; (2) he suffered a deprivation [because of the defendant's action] that would likely deter First Amendment activity in the future; and (3) the First Amendment activity was 'at least a motivating factor' in the Defendants' decision to take retaliatory action." *Bridges* v. *Gilbert*, 557 F.3d 541, 553 (7th Cir. 2009) (quoting *Woodruff* v. *Mason*, 542 F.3d 545, 551 (7th Cir. 2008)). The parties agree that the first element is satisfied. *See Walker* v. *Thompson*, 288 F.3d 1005, 1009 (7th Cir. 2002) (finding "a prisoner has a First Amendment Right to challenge the conditions of his or her confinement by, for example, filing grievances and lawsuits, and it is unlawful for prison officials to retaliate against a prisoner for exercising this right"). With regard to the second and third elements, however, Gilmore fails to

point to any evidence in the record that Koerner was aware of, let alone motivated by, Gilmore's grievance and civil suit, or that Koerner's conduct caused Gilmore to suffer a deprivation likely to deter future First Amendment activity.

"A motivating factor is a factor that weighs in the defendant's decision to take the action complained of—in other words, it is a consideration present to his mind that favors, that pushes him toward, the action." *Hasan* v. *U.S. Dept. of Labor*, 400 F.3d 1001, 1006 (7th Cir. 2005). It need not be the only reason defendant took the complained of action, but it must be *a* reason for it. *Id.* Implied in this standard is a requirement that the defendant be aware of the protected activity plaintiff claims motivated the alleged retaliation. *See Obriecht* v. *Raemisch*, 565 Fed. Appx. 535, 538 (7th Cir. 2014) (citing *Hobbs* v. *City of Chi.*, 573 F.3d 454, 463 (7th Cir. 2009); *Tomanovich* v. *City of Indianapolis*, 457 F.3d 656, 668 (7th Cir. 2006). Gilmore points to no evidence that Koerner knew about the prior grievance or lawsuit. In fact, Gilmore admitted that at the time of his conversation with Koerner, he was seeking to work on his *criminal* case (dkt. 59 ¶ 34). Gilmore has not pointed to any evidence that he informed Koerner of his grievance or civil suit during their conversation or that Koerner would have had that information from another source. Without knowledge, there can be no motivation to retaliate. Thus, based on the evidence in the record, no reasonable jury could find for Gilmore that his protected activity was a motivating factor for any retaliatory action by Koerner.

Moreover, Gilmore has failed to point to evidence in the record from which a reasonable jury could conclude that the deprivation he claims to have suffered was caused by Koerner's actions. In his response to the summary judgment motion, Gilmore makes the conclusional statement that "[i]t is . . . undisputed that Mr. Gilmore was indeed denied access to legal materials while at [JCDC]," without presenting any argument or evidence that this denial is attributable to the actions of Koerner. (Dkt. 58 at 2.) Indeed, Gilmore spends the bulk of his response discussing the actions of two non-defendants, James Stevenson and Chad Kolitwenzew. With regard to Koerner, the evidence in the record establishes that Gilmore spoke to Koerner once, on July 6, 2013, at which time Koerner told Gilmore that JCDC did not have a law library, but that he would look into Gilmore's request and get back to him. He gave Gilmore a grievance form to fill out regarding the issue, which Koerner passed along to his supervisors. Gilmore likewise admits that he did not speak to Koerner regarding his complaint after that initial conversation. [5] (Dkt. 59 ¶ 51.) Koerner's statement that JCDC did not have a law library was accurate, and he passed Gilmore's grievance to the appropriate authorities. Given this record, no reasonable jury could find the deprivation Gilmore alleges was caused by Koerner's actions.

[5] Gilmore attempts to walk back this admission in his Local Rule 56.1 Statement of Additional Facts (dkt. 59), in which he states, "On July 9, 2013, Defendant Koerner likewise told Mr. Gilmore that there were no legal resources for federal inmates." As an initial matter, this appears to be a typo, and Gilmore intended to write "state inmates." The record citation Gilmore provides, however, does not support that statement. Rather, Gilmore testified that he interacted with Koerner once (dkt. 52-2 at 158:21–159:5) and, first, that he didn't remember which officer he spoke to on July 9, 2013, then, that it was an "Officer Brown" who told him that legal resources were limited to federal inmates (*id.* at 167:2–9).

IV. Conclusion

For the foregoing reasons, the moving defendants are entitled to summary judgment.

Date: August 28, 2017

U.S. District Judge Joan H. Lefkow