[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 22-10808

Non-Argument Calendar

MAXIMO GOMEZ,

Plaintiff-Appellant,

versus

CAPTAIN STEVEN W. LISTER,
CAPTAIN JASON CARTER,
SGT. SLATER WILLIAMS,
SGT. ANTHONY MCCRAY,
JALENAH STORMANT,

Defendants-Appellees,

LPN JALENA MCELWAIN,

Defendant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:20-cv-00253-BJD-MCR

Before WILSON, LUCK, and MARCUS, Circuit Judges.

PER CURIAM:

Maximo Gomez, a Florida state prisoner proceeding *pro se*, appeals from the district court's order granting summary judgment to the defendants in his case alleging, *inter alia*, civil rights violations under 42 U.S.C. § 1983. On appeal, Gomez argues that: (1) the district court erred in concluding that the defendants did not use excessive force against him or disregard the risk of harm; and (2) the district court erred in determining that the defendants were not deliberately indifferent to his serious medical needs. After thorough review, we affirm.

I.

We review a district court's summary judgment ruling *de novo*, viewing the facts in the light most favorable to the non-

movant. *Hallums v. Infinity Ins. Co.*, 945 F.3d 1144, 1148 (11th Cir. 2019). Summary judgment is proper when "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). "[U]nsupported speculation does not meet a party's burden of producing some defense to a summary judgment motion," however, because it does not create a genuine issue of material fact, but instead "creates a false issue, the demolition of which is a primary goal of summary judgment." *Cordoba v. Dillard's Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005) (quotations omitted). Further, on summary judgment, we will "accept facts clearly depicted in a video recording even if there would otherwise be a genuine issue about the existence of those facts." *Shaw v. City of Selma*, 884 F.3d 1093, 1097 (11th Cir. 2018) (citing *Scott v. Harris*, 550 U.S. 372, 380–81 (2007)). An appellant abandons a claim on appeal "when he either makes only passing references to it or raises it in a perfunctory manner without supporting arguments and authority." *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014).

II.

The relevant background -- based on the summary judgment record, which includes video recordings of the incident in question -- is this. On October 8, 2017, Gomez was housed at Hamilton Correctional Institution in Jasper, Florida, when he advised Sergeant Chamele James that he was feeling extremely depressed and having a psychological emergency. Sergeant James escorted Gomez to Jalenah Stormant, the facility's nurse, for a mental health

evaluation. At the end of the evaluation, Gomez laid prone on the floor and refused to be escorted back to his cell. Officers carried Gomez to a confinement cell, where he began yelling, banging his body against the cell wall, and resisting the removal of his hand restraints, preventing the closure of the flap of the cell door. At the direction of Captain Steve Lister, Gomez was administered one application of chemical agents and the officers were able to close the door flap. Officers then escorted Gomez to a decontamination shower and when he again began yelling that he needed help and felt suicidal, Lister ordered a second and third application of chemical agents. Gomez continued to yell and curse, refused multiple orders to submit to restraints or change out of his wet shorts, and began jumping up and down. At that point, a cell extraction team, which included Sergeants Slater Williams and Anthony McCray, entered the shower cell, repeatedly demanded that Gomez "stop resisting," and restrained him.

Once restrained, Captain Jason Carter took Gomez back to Nurse Stormant for a post-use-of-force evaluation. The post-use-of-force examination form showed that Stormant evaluated Gomez for injuries, found no neurological trauma, and treated a laceration above his left eye. The next day, the prison doctor saw Gomez and sent him to an outside hospital, Shands Live Oak, which diagnosed him with a hand contusion and an eyebrow laceration.

Thereafter, Gomez brought this case in the United States District Court for the Middle District of Florida, raising state-law

battery and civil rights violations under § 1983. Following the filing of cross-motions for summary judgment, the district court granted each of the defendants' motions and denied Gomez's motion.

This timely appeal follows.

III.

First, we are unpersuaded by Gomez's claim that the district court erred in granting summary judgment to the defendants on his excessive-force claim. Under § 1983, no person acting under color of law shall deprive another of their constitutional rights. 42 U.S.C. § 1983. The Eighth Amendment, in turn, prohibits the infliction of cruel and unusual punishment. U.S. Const. amend. VIII. This "places restraints on prison officials, who may not . . . use excessive physical force against prisoners." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). The "unnecessary and wanton infliction of pain . . . constitutes cruel and unusual punishment forbidden by the Eighth Amendment." *Hudson v. McMillian*, 503 U.S. 1, 5 (1992) (quotations omitted). Unnecessary and wanton inflictions of pain include "those that are totally without penological justification." *Rhodes v. Chapman*, 452 U.S. 337, 346 (1981) (quotations omitted).

In considering an Eighth Amendment excessive force claim, we must consider both an objective and subjective component: whether officials "acted with a sufficiently culpable state of mind"; and whether "the alleged wrongdoing was objectively harmful enough to establish a constitutional violation." *Hudson*, 503 U.S. at 8 (quotations and brackets omitted). "Under the Eighth

Amendment, force is deemed legitimate in a custodial setting as long as it is applied in a good faith effort to maintain or restore discipline and not maliciously and sadistically to cause harm." *Skrtich v. Thornton*, 280 F.3d 1295, 1300 (11th Cir. 2002) (quotations and brackets omitted). To determine whether an application of force is excessive, we consider: (1) "the need for the application of force"; (2) "the relationship between that need and the amount of force used"; (3) "the threat reasonably perceived by the responsible officials"; and (4) "any efforts made to temper the severity of a forceful response." *Id.* (quotations omitted).

Additionally, "an officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer's use of excessive force can be held personally liable for his nonfeasance." *Id.* at 1301. However, "[m]ere knowledge of a substantial risk of serious harm" is insufficient. *Hale v. Tallapoosa Cnty.*, 50 F.3d 1579, 1583 (11th Cir. 1995). A plaintiff must produce evidence that the officer "knowingly or recklessly disregarded that risk by failing to take reasonable measures to abate it." *Id.* (quotations and brackets omitted).

Here, the district court did not err in concluding that the defendants -- Captain Lister, Sergeant Williams, and Sergeant McCray -- were entitled to summary judgment on Gomez's excessive-force claims. First, as for Gomez's claim that Captain Lister used excessive force by authorizing chemical agents to be used against him, there is no genuine dispute of material fact concerning this claim. The video recording reveals that before the first

application of chemical agents, Gomez repeatedly defied orders and engaged in disruptive, aggressive behavior, screaming and banging his body against the cell wall. Then, before the subsequent applications of chemical agents, Gomez again refused to comply with orders, yelled and cursed at officers, and attempted to communicate with other inmates. On this record, Captain Lister reasonably concluded that force was needed after Gomez ignored his verbal orders, and authorized only the use of chemical agents necessary to gain Gomez's compliance. *Skrtich*, 280 F.3d at 1300. Further, in light of Gomez's aggressive behavior and his attempts to communicate with other inmates, Lister reasonably considered Gomez a threat to prison safety. *Id.*

There is also no genuine dispute of material fact concerning Gomez's claims against Sergeants Williams and McCray. As the video recording shows, when the cell extraction team arrived, Gomez refused to submit to hand restraints or change into dry clothes, raised his arms in the air, and jumped in an aggressive manner. Thus, in conjunction with Gomez's previous noncompliance with numerous orders, the officers reasonably believed that the use of force was required. *Id.* Moreover, nothing in the record suggests the officers used more physical force than necessary. *Id.* Only three members of the five-man cell extraction team entered the cell, and the extraction took just two minutes, after which the officers used no further physical force and took Gomez to the medical room. And because Gomez cannot show that Sergeants Williams and McCray used excessive force, he likewise cannot show

that Lister failed to intervene to protect him from excessive force. Accordingly, we affirm the district court's grant of summary judgment in favor of Lister, Williams and McCray.[1]

IV.

We also find no merit to Gomez's argument that the district court erred in concluding that the defendants were not deliberately indifferent to his serious medical needs when he was seen in the post-use-of-force medical evaluation. "[D]eliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain . . . proscribed by the Eighth Amendment." *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (quotations and citation omitted). In bringing a deliberate indifference claim, a plaintiff must show "(1) a serious medical need; (2) the defendant's deliberate indifference to that need; and (3) causation between that indifference and the plaintiff's injury." *Gilmore v. Hodges*, 738 F.3d 266, 273–74 (11th Cir. 2013) (quotations omitted).

"A plaintiff must first show an objectively serious medical need that, if unattended, posed a substantial risk of serious harm, and that the official's response to the need was objectively

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[1] Gomez only mentions in one sentence that the district court erred in interpreting his unlawful battery claims against Sergeants McCray and Williams as part of his constitutional claims, and, therefore, he has abandoned this argument. *Sapuppo*, 739 F.3d at 681. In any event, any claim by Gomez for battery fails for the same reasons as his constitutional claims, whether considered as part of his constitutional claims or independently under state law.

insufficient." *Id.* at 274. A serious medical need is "one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Id.* (quotations omitted). In general, serious medical needs require immediate medical attention. *Id.* Next, the plaintiff must show that "the official subjectively knew of and disregarded the risk of serious harm, and acted with more than mere negligence." *Id.* "[K]nowledge of the need for medical care and intentional refusal to provide that care has consistently been held to surpass negligence and constitute deliberate indifference." *Id.* (quotations omitted). "Even when medical care is ultimately provided, a prison official may nonetheless act with deliberate indifference by delaying the treatment of serious medical needs." *Nam Dang by & through Vina Dang v. Sheriff, Seminole Cnty.*, 871 F.3d 1272, 1280 (11th Cir. 2017). However, the delay must "seriously exacerbate the medical problem" and be "medically unjustified." *Taylor v. Adams*, 221 F.3d 1254, 1259–60 (11th Cir. 2000).

A prisoner alleging deliberate indifference "has a steep hill to climb." *Keohane v. Fla. Dep't of Corr. Sec'y*, 952 F.3d 1257, 1266 (11th Cir. 2020). Medical treatment only violates the Eighth Amendment when it is "so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness." *Id.* (quotations omitted). The Eighth Amendment does not require medical care to be "perfect, the best obtainable, or even very good." *Id.* (quotations omitted). "[M]ere negligence

or a mistake in judgment does not rise to the level of deliberate indifference." *Mann v. Taser Int'l, Inc.*, 588 F.3d 1291, 1308 (11th Cir. 2009). Further, "a simple difference in medical opinion between the prisoner's medical staff and the inmate as to the latter's diagnosis or course of treatment" does not support a claim of deliberate indifference. *Keohane*, 952 F.3d at 1266.

Here, there is no genuine dispute of material fact concerning whether Captain Carter and Nurse Stormant knew of and disregarded any risk of harm and acted with more than mere negligence when Gomez went for the initial post-use-of-force evaluation. *Gilmore*, 738 F.3d at 274. Indeed, the undisputed record reflects that when Stormant evaluated Gomez for injuries during the evaluation -- assessing and finding, among other things, that there was no indication that he had suffered a concussion or other neurological trauma -- she found a laceration above his left eye that required treatment, she cleaned and applied an antibiotic to the laceration, and she applied steri-strips. The evaluation form stated that Gomez tolerated the treatment well and had no further complaints. After Gomez's laceration reopened about an hour later, Nurse Stormant noted in a laceration protocol form that it had reopened, cleaned the wound again and reapplied steri-strips. She contacted Dr. Colombani, a prison doctor, who advised her to use bandages and said he would evaluate it the morning to see if sutures were required; as a licensed practical nurse, Stormant was not authorized to apply sutures herself.

On this record, Gomez cannot show that Stormant was deliberately indifferent to, or intentionally disregarded, a serious medical need, or that her care was "so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness." *Keohane*, 952 F.3d at 1266. Instead, his claims amount to mere disagreements as to the course of his treatment, which do not support a claim of deliberate indifference. *Id.*

Nor can Gomez show that his medical treatment was delayed in any way that seriously exacerbated his medical problem. *Taylor*, 221 F.3d at 1259–60. As the undisputed record reflects, prison officers brought him promptly to the medical room for a post-use-of-force evaluation after the cell extraction. Nurse Stormant determined at this evaluation that suturing was unnecessary, and, regardless, she was not authorized to apply sutures. There is also nothing to suggest that Stormant delayed Gomez's treatment in a way that exacerbated his injuries. Although Gomez was prescribed eyeglasses in 2018, medical forms showed that neither Dr. Colombani nor the doctors at Shands Live Oak diagnosed him with an eye injury.

As for Gomez's claim that Captain Carter told Stormant to stop treating him during the post-use-of-force evaluation, it is based on pure speculation. *Cordoba*, 419 F.3d at 1181. While Carter moved Gomez to a confinement cell during the evaluation, Stormant explained that Carter temporarily moved Gomez to a confinement cell while she went to obtain more steri-strips -- which is routine procedure. After Stormant obtained the necessary

supplies, the officers returned Gomez to the medical room for further treatment, and Stormant continued treating him until he required no further treatment in her medical opinion. Further, because Sergeants McCray and Williams did not use excessive force, as we've already discussed, Gomez's claim that Carter was deliberately indifferent in failing to intervene to protect him fails as well. We, therefore, also affirm the district court's grant of summary judgment in favor of Nurse Stormant and Captain Carter.

AFFIRMED.