[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 16-11871
Non-Argument Calendar

D.C. Docket No. 1:13-cv-00070-KD-B

BRENT JACOBY,

Plaintiff-Appellant,

versus

SHERIFF HUEY MACK,
JIMMIE BENNETT, et al.,

Defendants-Appellee.

Appeal from the United States District Court
for the Southern District of Alabama

(November 8, 2018)

Before WILSON, JORDAN, and ANDERSON, Circuit Judges.

PER CURIAM:

Plaintiff-Appellant Brent Jacoby ("Mr. Jacoby"), brings claims under 42 U.S.C. § 1983 against Defendants-Appellees ("Appellees") Sherriff Huey Mack, Jimmie Bennett, Sergeant Lovett, Corporal Winky, and Officer McCants arising out of his time in pretrial detention in the Baldwin County, Alabama jail.[1] Mr. Jacoby asserts the following claims: (1) excessive force; (2) retaliation; (3) inadequate conditions of confinement; (4) due process violations; and (5) supervisory liability. Mr. Jacoby appeals the district court's grant of Appellees' motion for summary judgment as to each of these claims. For the reasons set forth below, we affirm in part and reverse and remand in part.

I. FACTUAL BACKGROUND

The facts viewed in the light most favorable to Mr. Jacoby, the nonmovant in the motion for summary judgment, establish the following:

A. Placement in Administrative Segregation

On January 6, 2013, prison officials received a tip that tobacco—contraband under jail policy—was located in the cell block to which Mr. Jacoby and several other inmates were assigned. Prison officials searched the cell and located tobacco

[1] During the proceedings in the district court, defendant Dale Byrne ("Byrne") passed away and a suggestion of death was filed, but Jacoby failed to substitute Byrne's estate and now acknowledges that neither Byrne nor his estate are a party to this appeal.

While Corporal Spencer ("Spencer") was named as a party in Mr. Jacoby's initial complaint, Mr. Jacoby's amended complaint sought to dismiss Spencer as a party. The magistrate judge granted Mr. Jacoby's motion to dismiss Spencer. He is accordingly not a party to this appeal.

taped to a string and hidden behind a door frame. All inmates who could have been implicated in this incident, including Mr. Jacoby, were taken to administrative segregation, even though another inmate confessed that the tobacco belonged to him. Mr. Jacoby was ultimately found not guilty of possession of contraband at a disciplinary hearing.

Nonetheless, while awaiting his hearing, Mr. Jacoby was housed in administrative segregation. Mr. Jacoby asserts that, while in administrative segregation he was placed with two other inmates in a three-man cell; was forced to sleep on the floor under/near the toilet with urine splattering on him; and was denied outside recreation time, access to periodicals, and the ability to purchase hygiene products. Mr. Jacoby also states that he was mentally ill and repeatedly requested to be housed elsewhere.

B. Pepper Spraying, Decontamination, and Restraint

On January 7, 2013, the day after Mr. Jacoby was placed in administrative segregation, Appellee Officer McCants ("McCants") watched Mr. Jacoby kick his cell door several times. McCants instructed Mr. Jacoby to stop kicking the door, but when McCants walked away Mr. Jacoby kicked the door again and said, "McCants you're not going to do nothing." McCants then contacted floor supervisor Appellee Corporal Hallanda Winky ("Winky") about this incident. Winky informed Appellee Sergeant Lovett ("Lovett") that Mr. Jacoby was being

disruptive and refusing to follow instructions. Lovett instructed Winky to remove Mr. Jacoby from his cell and to spray him with pepper spray if he continued to be combative and refuse to follow instructions. Lovett neither observed Mr. Jacoby's behavior nor was present when Mr. Jacoby was removed from his cell.

A video recording, lasting approximately six and a half minutes, captures what occurred next. Winky, standing among a group of officers, directs the group to remove Mr. Jacoby from his cell and states, "I'll tell y'all like this. You already got permission, you know what to do." One officer asks another, "you want to spray him?" The group of at least six officers proceeds up the stairs and stops at Mr. Jacoby's cell, which is occupied by three inmates including Mr. Jacoby. When the officers open the cell door, Mr. Jacoby is on the floor of the cell, with his knees bent under his body and the top half of his body bending forward and touching the floor. Mr. Jacoby is clad in pants rolled up into capris and is not wearing a shirt, socks, or shoes. The camera's view is obscured by officers standing partially in front of it, so the location of Mr. Jacoby's hands is not pictured. The other two inmates, one sitting on a top bunk bed and another sitting on a bottom bunk bed, are instructed to leave and do so. As the other inmates are leaving the cell, McCants and another officer step into the cell and Officer McCants is heard saying

"lay down, Jacoby,"[2] to which Mr. Jacoby responds "I am." Mr. Jacoby remains in the same position on the floor, with his knees bent under him. The video records McCants saying "down" and another officer saying "hands behind your back" in rapid succession.[3] The location of Mr. Jacoby's hands is still not pictured in the video recording. The parties do not dispute, however, that Mr. Jacoby's hands were not behind his back at this time.[4] Less than a second later, McCants begins spraying Mr. Jacoby and continues to do so for approximately two seconds.[5] The next time Mr. Jacoby is visible in the video, he is lying flat on the floor, face down, with his hands behind his back as McCants is handcuffing him and helping him stand. Mr. Jacoby is then heard saying, "What'd you do that for?"

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[2] In McCants's activity report narrative he states that he directed Mr. Jacoby more specifically to lie down on his stomach. Similarly, in Winky's officer statement, she states that Mr. Jacoby was directed to lie flat. Both of these assertions are belied by the video documenting the entire encounter in Mr. Jacoby's cell. "Where the video obviously contradicts [a party's] version of the facts, we accept the video's depiction instead of [the party's] account." Pourmoghani-Esfahani v. Gee, 625 F.3d 1313, 1315 (11th Cir. 2010) (citing Scott v. Harris, 550 U.S. 372, 127 S.Ct. 1769, 1776 (2007)).

[3] In McCants and Winky's affidavits they both state, however, that Mr. Jacoby was instructed to put his hands behind his head and did not do as instructed prior to being sprayed. Again, these assertions are contradicted by the video in which Mr. Jacoby is instructed to put his hands behind his back. We accordingly decline to accept McCants's and Winky's contrary assertions.

[4] Both McCants in his activity report narrative and Winky in her officer statement state that Mr. Jacoby's hands were not behind his back prior to being sprayed. Jacoby, in his verified response to Appellees' motion for summary judgment, merely states that his hands and arms were visible prior to being sprayed. Accordingly, Mr. Jacoby has not created a genuine dispute as to this factual matter.

[5] Winky was written up for allowing a subordinate officer to spray Mr. Jacoby because Lovett had specifically ordered that Winky spray Mr. Jacoby if necessary.

McCants and the group of officers then lead Mr. Jacoby, whose back is glossy—visibly wet from the spray—down the stairs. Mr. Jacoby argues about kicking the door and the use of the pepper spray, stating, "Seriously? You sprayed me for that?" As he is being led to decontaminate, Mr. Jacoby threatens to sue all of the officers involved, states that what just occurred was an unnecessary use of force, and complains about being "locked up for somebody else's tobacco." Mr. Jacoby is directed to a large sink in a closet, where McCants hoses off his face and head—but not his back—for approximately forty-five seconds and wipes his face off with paper towels. Mr. Jacoby asks to be further decontaminated, stating, "That's all I get? I need some more, man, please. Get my eyes again."

Mr. Jacoby is led to a four point restraint chair and is pictured squinting and shaking his face as if to dry it off. Mr. Jacoby complains about being sprayed while lying down, stating, "If I had known that, you could have at least let me turn around and fight you or something. I don't deserve to be sprayed." As Mr. Jacoby is placed in the arm restraints he is seen wiping his eyes on his pants and an officer approaches and says, "You don't want to rub them, I promise, it'll be worse." Once fully restrained, Mr. Jacoby requests to be further decontaminated and requests clean pants and boxers. An officer responds, "We're going to take care of you." At this point, the video ends.

Mr. Jacoby, in his verified complaint, states that he remained in the restraint chair for eight and a half hours and that he was unable to use the bathroom or change his clothes during this time.[6] Mr. Jacoby asserts that the burning sensation caused him to cry out for water and to scream in agony, but no one addressed his concerns and he was forced to urinate on himself. After being released from the chair after eight and a half hours, Mr. Jacoby was not provided access to a shower or clean clothes until about eighteen hours after he was pepper sprayed. Appellees do not dispute—and do not address whatsoever—these facts regarding Mr. Jacoby being pepper sprayed on the back but only decontaminated on his face and head, the length of his time in the restraint chair, his inability to use the bathroom, his cries for help, or the length of time he waited to shower and to receive clean clothes. These facts are accordingly not in dispute for purposes of summary judgment.[7]

C. Possession of a Weapon Charge

On January 27, 2013, a search of Mr. Jacoby's cell was conducted. Mr. Jacoby was found in possession of a 1.5 lb. block of crushed soap. Lovett believed

[6] Mr. Jacoby's initial complaint is verified and therefore "may be treated as an affidavit on summary judgment[.]" United States v. Four Parcels of Real Prop. In Greene & Tuscaloosa Ctys., 941 F.3d 1428, 1444 n.35 (11th Cir. 1991).

[7] As we have previously recognized, what we state as "facts" for purposes of reviewing a summary judgment motion may not be the actual facts determined in further proceedings. Swint v. City of Wadley, 5 F.3d 1435, 1439 (11th Cir. 1993), overruled on other grounds by Swint v. Chambers Cty. Comm'n, 514 U.S. 35, 115 S. Ct. 1203 (1995).

this to be in clear violation of the Baldwin County Jail's contraband policy because the soap could be used as a weapon, to hide other contraband, or to attempt to vandalize property. On February 4, 2013, Mr. Jacoby was found guilty of this offense at a disciplinary hearing and confined to segregation for thirty days.

D. Mr. Jacoby's Relevant Previous Litigation

In Jacoby v. Baldwin County (Jacoby I), No. 12-0197-WS-M, 2013 WL 2285108 (S.D. Ala. May 22, 2013), aff'd, 596 F. App'x 757 (11th Cir. 2014), Mr. Jacoby asserted claims of deliberate indifference to a serious medical need, deliberate indifference to substantial risk of serious harm, excessive force, retaliation, and due process violations against Sherriff Huey Mack ("Mack"), Dale Byrne ("Byrne"), and various others not parties to the instant litigation in both their official and individual capacities. These claims arose out of acts occurring from October 2011 to mid-2012. Id. at *9.

In Jacoby v. Mack (Jacoby II), No. 12-0366-CG-C, 2014 WL 2435655 (S.D. Ala. May 30, 2014), rev'd in part, aff'd in part, 666 F. App'x 759 (11th Cir. 2016), Mr. Jacoby asserted claims of excessive force, due process violations, unsafe housing environment, segregated housing conditions, failure to protect, retaliation, and failure to train and supervise against Mack, Byrne, and various others not parties to the instant litigation in both their official and individual capacities. These claims arose out of acts occurring from February–April 2012. Id. at * 1–3.

In Jacoby v. Baldwin County (Jacoby III), No. 12-0640-CG-N, 2014 WL 2641834 (S.D. Ala. June 13, 2014), aff'd, 835 F.3d 1338 (11th Cir. 2016), Mr. Jacoby asserted claims of due process violations, inadequate conditions of confinement, deliberate indifference to a substantial risk of serious harm, excessive force, and retaliation against Mack, Byrne, Captain Jimmie Bennett ("Bennett"), and various others not parties to the instant litigation in both their official and individual capacities. Mr. Jacoby also asserted policy and procedure claims against Baldwin County, alleging that it had inadequate disciplinary proceedings, that it did not separate seriously mentally challenged inmates from others in segregation, and that it had inadequate psychiatric care policies. These claims arose out of acts occurring between August–September 2012. Id. at *1.

E. The Instant Litigation

Mr. Jacoby filed the instant suit in February of 2013. He filed an amended complaint[8] in November of 2014, after which Appellees filed answers and special reports, submitted testimony and documents, and requested the court to consider

[8] Mr. Jacoby's amended complaint, however, is unverified and therefore may not be treated as an affidavit on summary judgment. See Gordon v. Watson, 622 F.2d 120, 123 (5th Cir. 1980) ("Although pro se litigants are not held to the same standards of compliance with formal or technical pleadings rules applied to attorneys, we have never allowed such litigants to oppose summary judgments by the use of unsworn materials."); see also Arthur v. King, 500 F.3d 1335, 1343 (11th Cir. 2007).

The Eleventh Circuit, in an en banc decision, Bonner v. City of Prichard, 611 F.2d 1206, 1209 (11th Cir. 1981), adopted as precedent decisions of the former Fifth Circuit rendered prior to October 1, 1981.

the filings as motions for summary judgment. On February 11, 2016, the magistrate judge ordered that the special reports would be treated as motions for summary judgment. In early March 2016, Mr. Jacoby responded to the order converting Appellees' special report.[9] On March 21, 2016, the district judge granted Appellees' motion for summary judgment and dismissed Mr. Jacoby's action with prejudice. Jacoby v. Mack ("Jacoby IV"), No. 13-00070-KD-B, 2016 WL 1117525, at *1 (S.D. Ala. Mar. 22, 2016). Mr. Jacoby now appeals.

II. STANDARD OF REVIEW

We review the district court's order granting summary judgment de novo, reviewing all the evidence and drawing all reasonable inferences in the light most favorable to the non-moving party. Owen v. I.C. Sys., Inc., 629 F.3d 1263, 1270 (11th Cir. 2011) (citation omitted). Summary judgment is appropriate if there are no genuine issues of material fact, and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). A genuine issue of material fact exists when "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, 2510 (1986).

[9] Mr. Jacoby also responded in opposition to a separate special report filed prior to his amended complaint. Mr. Jacoby attested to the truth of that pleading's factual assertions under penalty of perjury and it therefore may be considered as a sworn affidavit at summary judgment. See, e.g., Caldwell v. Warden, FCI Talladega, 748 F.3d 1090, 1098 (11th Cir. 2014); Pretka v. Kolter City Plaza II, Inc., 608 F.3d 744, 749 n.5 (11th Cir. 2010).

Specific to our de novo review in the qualified immunity context, "[w]e resolve all issues of material fact in the plaintiffs' favor and approach the facts from the plaintiffs' perspective because '[t]he issues appealed here concern not which facts the parties might be able to prove, but, rather, whether or not certain given facts showed a violation of clearly established law.'" Terrell v. Smith, 668 F.3d 1244, 1250 (11th Cir. 2012) (citation omitted). To overcome summary judgment where qualified immunity is at issue, "the facts in dispute must raise a genuine issue of fact material to the determination of the underlying issue." Id. (citation omitted).

III. ANALYSIS

Qualified immunity shields government officials sued in their individual capacities[10] for performing discretionary functions from liability under § 1983, as long as their conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Case v. Eslinger, 555 F.3d 1317, 1325 (11th Cir. 2009) (citation omitted); Priester v. City

[10] The district court considered Mr. Jacoby's claims to the extent he alleged them against Appellees in their official capacity. The court, having nothing before it to suggest that Alabama had either consented to suit or that Congress had abrogated Alabama's immunity, concluded that Appellees had absolute immunity against claims asserted against them in their official capacities. Jacoby IV, 2016 WL 1117525, at *5. On appeal, Mr. Jacoby only challenges the district court's conclusions regarding his claims against Appellees in their individual capacities. Accordingly, we only address those arguments raised on appeal. Access Now, Inc. v. Sw. Airlines Co., 385 F.3d 1324, 1330 (11th Cir. 2004).

of Riveria Beach, Fla., 208 F.3d 919, 925 (11th Cir. 2000). To invoke the defense of qualified immunity, a defendant must first establish that he or she was acting within the scope of his or her discretionary authority.[11] Case, 555 F.3d at 1325. Once the defendant has made this showing, the burden shifts to the plaintiff to overcome the qualified-immunity defense by showing (1) the defendant violated his or her constitutional rights and (2) the right at issue was clearly established at the time of the alleged misconduct. Terrell, 668 F.3d at 1250. "A plaintiff must satisfy both prongs of the analysis to overcome a defense of qualified immunity. The determination of these elements may be conducted in any order." Melton v. Abston, 841 F.3d 1207, 1221 (11th Cir. 2016) (citations omitted).

A right is clearly established when a reasonable official would understand that his or her conduct violates that right. Coffin v. Brandau, 642 F.3d 999, 1013 (11th Cir. 2011) (en banc) (citation omitted). "The touchstone of the 'clearly established' inquiry is whether the official had 'fair warning' and notice that his

[11] On appeal, Mr. Jacoby states in a conclusory fashion but does not meaningfully argue that Appellees acted outside of their discretionary functions during the events in question. The district court, however, stated that "no one has disputed that Defendants were acting within the scope of their discretionary authority as jail officials at the time of the incidents asserted in the complaint." Jacoby IV, 2016 WL 1117525, at *6. As we have previously stated, "[a]rguments raised for the first time on appeal are not properly before this Court." Millennium Partners, L.P. v. Colmar Storage, LLC, 494 F.3d 1293, 1304 (11th Cir. 2007) (citation omitted); accord Peart v. Shippie, 345 F. App'x 384, at *1 (11th Cir. 2009) (per curiam) (applying this rule to a pro se action). Having carefully reviewed the record below, we agree with the district court that this argument was not raised before that court and accordingly decline to address this argument on appeal.

conduct violated the constitutional right in question." Melton, 841 F.3d at 1221 (citations omitted).

For the law to be clearly established, "case law must ordinarily have been earlier developed in such a concrete and factually defined context to make it obvious to all reasonable government actors, in the defendant's place, that what he is doing violates a federal law." Priester, 208 F.3d at 926 (citation omitted). "The Court looks to the binding precedent set forth in the decisions of the Supreme Court, the Eleventh Circuit, or the highest court of the state . . . to decide whether a right is clearly established." Melton, 841 F.3d at 1221 (citation omitted). "Exact factual identity with a previously decided case is not required, but the unlawfulness of the conduct must be apparent from the pre-existing law." Coffin, 642 F.3d at 1013 (citations omitted).

The Eighth Amendment to the United States Constitution prohibits cruel and unusual punishment. U.S. Const. amend. VIII. "Where, as here, the plaintiff is a pretrial detainee . . . , the Due Process Clause of the Fourteenth Amendment, not the Eighth Amendment's prohibition against cruel and unusual punishment, governs our analysis." Goodman v. Kimbrough, 718 F.3d 1325, 1331 n.1 (11th Cir. 2013) (citation omitted). However, we have recognized that "the standards under the Fourteenth Amendment are identical to those under the Eighth." Goebert v. Lee Cty., 510 F.3d 1312, 1326 (11th Cir. 2007) (citation omitted).

The Eighth Amendment gives rise to three distinct claims in the prison context: those challenging the specific conditions of confinement, excessive use of force, and deliberate indifference to a prisoner's serious medical needs. Thomas v. Bryant, 614 F.3d 1288, 1303–04 (11th Cir. 2010) (citation omitted). A plaintiff asserting any of these claims must establish (a) "an objective showing of a deprivation or injury that is 'sufficiently serious' to constitute a denial of the 'minimal civilized measure of life's necessities'" and (b) "a subjective showing that the official had a 'sufficiently culpable state of mind.'" Id. at 1304 (citation omitted). With these guiding principles in mind, we take up each of Mr. Jacoby's arguments in turn.

A. Excessive Force Claim

First, we consider Mr. Jacoby's argument that the district court improperly granted Appellees' motion for summary judgment as to his excessive force claim alleged against McCants, Winky, and Lovett. The district court concluded that those officers involved in Mr. Jacoby's pepper spraying were entitled to qualified immunity and were thus shielded from liability. In considering this claim, we determine first whether Mr. Jacoby's constitutional rights were violated and second whether those rights were clearly established at the time the underlying conduct took place.

1. Whether Mr. Jacoby's constitutional rights were violated.

Our previous standard for evaluating claims of excessive force under the Fourteenth Amendment required the plaintiff to show that the defendant applied the force "maliciously or sadistically for the very purpose of causing harm." Bozeman v. Orum, 422 F.3d 1265, 1271 (11th Cir. 2005). This standard was abrogated by Kingsley v. Hendrickson, ___ U.S. ___, ___, 135 S. Ct. 2466, 2472 (2015), where the Supreme Court held that "a pretrial detainee must show only that the force . . . used against him was objectively unreasonable." Kingsley, ___ U.S. at ___, 135 S. Ct. at 2473. Accordingly, in considering whether Mr. Jacoby's Fourteenth Amendment rights were violated, we apply Kingsley's objective reasonableness standard.

We consider the use of pepper spray against Mr. Jacoby and his allegedly inadequate decontamination and subsequent restraint as a single excessive force claim.[12] The undisputed evidence construed in Jacoby's favor is that Mr. Jacoby

[12] While we have, in an unpublished opinion, considered a previous claim raised by Mr. Jacoby involving the use of pepper spray as two distinct claims—one regarding the initial spray as an excessive force claim and the second regarding an alleged failure to decontaminate for eight hours as a deliberate indifference claim—we did so in that case because Mr. Jacoby was proceeding pro se before this court and we therefore had an obligation to construe his pleadings according to less stringent standards. See Jacoby I, 596 F. App'x at 766. While proceeding pro se before the district court in the instant litigation, Mr. Jacoby stylized his complaint as alleging a single excessive force claim, which the district court treated as such. See Jacoby IV, 2016 WL 1117525, at *6. Mr. Jacoby is represented by counsel in the instant appeal, however, and does not challenge the district court's construction of this claim. In his briefing, Mr. Jacoby likewise treats the underlying events as giving rise to a single excessive force claim. We accordingly consider the underlying allegations as raising a single excessive force claim. See Danley v. Allen, 540 F.3d 1298, 1306 (11th Cir. 2008) (construing a spraying and subsequent confinement as a single excessive force claim where the complaint alleged as much), overruled on other grounds as recognized by Randall v. Scott, 610 F.3d 701, 709 (11th Cir. 2010).

was pepper sprayed on the head and back while shirtless on the floor after failing to comply with an order to put his hands behind his back. He was led away and decontaminated by officers who sprayed a hose on his face and head for approximately forty-five seconds and wiped off his face with paper towels. Mr. Jacoby's back was never decontaminated, despite his multiple requests for further decontamination and clean clothes. Despite there being no evidence of Mr. Jacoby continuing to disobey orders, he was then restrained in a chair for eight and a half hours. During this time, Mr. Jacoby cried out in pain and for water. He was not allowed to use the restroom and eventually urinated on himself. Mr. Jacoby was not permitted to shower or provided with clean clothes until eighteen hours after being sprayed. Mr. Jacoby reports that this experience caused him physical and psychological pain.

Viewing these facts in the light most favorable to Mr. Jacoby and drawing all reasonable inferences in his favor, we conclude that McCants's and Winky's actions surrounding his pepper spraying—specifically his inadequate decontamination and subsequent restraint while he was neither combative nor disobeying orders—were objectively unreasonable and in violation of Jacoby's Fourteenth Amendment right to be free from excessive force.[13] Having found a

[13] Lovett was only involved in Mr. Jacoby's pepper spraying to the extent that he gave Winky permission to spray Mr. Jacoby if he was combative and refused to follow orders. Mr. Jacoby has not presented any facts from which we can conclude that Lovett violated Mr.

constitutional violation to have occurred in this case, we proceed to determine whether Mr. Jacoby's constitutional rights in question were clearly established at the time of the underlying conduct. See Terrell, 668 F.3d at 1250.

2. Whether the right at issue was clearly established at the time of the alleged misconduct.

Next, Appellees contend that "the relatively minor use of force under these circumstances was . . . , at the very least, not in violation of clearly established law." Because Kingsley was issued after the events underlying this litigation took place, it will not be considered in determining whether the conduct violated clearly established law at the time it occurred. See Belcher v. City of Foley, 30 F.3d 1390, 1400 n.9 (11th Cir. 1994) ("[Cases] decided after the conduct in this case occurred . . . could not have clearly established the law at the time of the conduct in this case."). At the time of the incident underlying this litigation, we adhered to the following standard in excessive force cases:

> A jailor's use of force against a pretrial detainee is excessive under the Fourteenth Amendment if it "shocks the conscience." The use of force does not "shock the conscience" if it is applied "in a good-faith effort to maintain or restore discipline." However, if the force is applied "maliciously and sadistically to cause harm," then it does "shock the conscience," and is excessive under the Eighth or Fourteenth Amendments.

Jacoby's constitutional right to be free from excessive force. The district court appropriately granted Appellees' motion for summary judgment as to Lovett.

Fennell v. Gilstrap, 559 F.3d 1212, 1217 (11th Cir. 2009) (citations omitted). In determining whether force was applied "maliciously and sadistically to cause harm" we consider the following factors: "a) the need for the application of force; b) the relationship between the need and the amount of force that was used; c) the extent of the injury inflicted upon the prisoner; d) the extent of the threat to the safety of staff and inmates; and e) any efforts made to temper the severity of a forceful response." Id. (citation omitted).

In considering these factors, we "give a 'wide range of deference to prison officials acting to preserve discipline and security,' including when considering decisions made at the scene of a disturbance." Cockrell v. Sparks, 510 F.3d 1307, 1311 (11th Cir. 2007) (citation omitted). We "examine the facts as reasonably perceived by [the defendant] on the basis of the facts known to him at the time." Fennell, 559 F.3d at 1217–18 (citation omitted).

In determining whether the force in this case was applied "maliciously and sadistically to cause harm" we first consider "the need for the application of force[.]" Fennell, 559 F.3d at 1217. As a general matter, prison officials are authorized to use force when a prisoner fails to obey an order. Danley v. Allen, 540 F.3d 1298, 1307–08 (11th Cir. 2008), overruled on other grounds as recognized by Randall v. Scott, 610 F.3d 701, 709 (11th Cir. 2010). We have recognized that "[p]epper spray is an accepted non-lethal means of controlling

unruly inmates." Id. As discussed above, the facts viewed in the light most favorable to Mr. Jacoby support that he was violating an order to put his hands behind his back prior to being sprayed. This factor weighs against finding a constitutional violation.

Second, we consider "the relationship between the need and the amount of force that was used[.]" Fennell, 559 F.3d at 1217. Pepper spray is designed to be disabling without causing permanent physical injury and is a reasonable alternative to escalating a physical confrontation. Danley, 540 F.3d at 1308 (citation omitted). Therefore, "[a] short burst of pepper spray is not disproportionate to the need to control an inmate who has failed to obey a jailer's orders." Id. at 1307–08 (citation omitted). Again, as discussed above, Mr. Jacoby was failing to obey an order at the time of his spraying and the initial use of force was thus not disproportionate. This facts likewise weighs against finding a constitutional violation.

Third, we consider "the extent of the injury inflicted upon the prisoner[.]" Fennell, 559 F.3d at 1217. Considering the facts in a light most favorable to Mr. Jacoby, he suffered physical and mental pain as a result of being sprayed, allegedly improperly decontaminated, restrained for eight and a half hours, not being allowed to use the restroom and consequently urinating on himself, and not being allowed to shower for eighteen hours after being sprayed. That Mr. Jacoby might not have suffered a serious injury does not defeat his excessive force claim. See

Wilkins v. Gaddy, 559 U.S. 34, 37, 130 S. Ct. 1175, 1178 (2010) (explaining how the absence of a serious injury should be considered under an Eighth Amendment inquiry); Hudson v. McMillian, 503 U.S. 1, 9, 112 S. Ct. 995, 997 (1992) (holding that use of excessive physical force against a prisoner may constitute cruel and unusual punishment where the inmate does not suffer serious injury); see also Brooks v. Warden, 800 F.3d 1295, 1307–08 (11th Cir. 2015) (holding that, under the Prison Litigation Reform Act, 42 U.S.C. § 1997e, a prisoner may recover nominal damages for a constitutional violation without showing physical injury). With that being said, in light of Mr. Jacoby's relatively minor injuries, this factor similarly weighs against finding a constitutional violation.

Fourth, we consider "the extent of the threat to the safety of staff and inmates[.]" Fennell, 559 F.3d at 1217. Again considering the facts in a light most favorable to Mr. Jacoby, it is not apparent that he posed an immediate threat to the staff entering his cell, as he was positioned on the floor and noncombative. Mr. Jacoby likewise posed no threat to other inmates, as they had exited the cell. However, we also consider the facts known to Appellees about Mr. Jacoby's prior behavior. Id. ("We examine the facts as reasonably perceived by [the defendant] on the basis of the facts known to him at the time.") Those facts include, for example, McCants's characterization of Mr. Jacoby as a "violent and disruptive presence" in the Baldwin County Jail who "constantly challeng[ed] jail staff

authority and refus[ed] to follow orders." In light of Appellees' prior experiences with Mr. Jacoby, his failure to follow an order was perceived by McCants and Winky as creating a safety threat. This factor weighs against finding a constitutional violation.

Finally, we consider "any efforts made to temper the severity of a forceful response." Fennell, 559 F.3d at 1217. As in Danley, "[t]his factor brings up the remainder of the jailers' conduct, which amounted to a continuation and aggravation of the initial force applied to [the plaintiff] after the need for force had ended." 540 F.3d at 1308. We made clear in Danley that "subjecting a prisoner to special confinement that causes him to suffer increased effects of environmental conditions . . . can constitute excessive force." Id. "When jailers continue to use substantial force against a prisoner who has clearly stopped resisting . . . that use of force is excessive. Id. at 1309 (citation omitted). In Danley, defendants sprayed the plaintiff with pepper spray for five seconds for failing to obey an order, pushed him into a small and poorly ventilated cell, and closed the door despite his pleas to be let out. Id. at 1304. After twenty minutes, Plaintiff was allowed out, permitted to shower, and then placed into a larger but still poorly ventilated cell. Id. at 1304–05. We found the conduct in Danley to amount to an excessive use of force in violation of the Fourteenth Amendment despite the initial use of pepper spray

being justified and despite all of the four proceeding factors weighing against finding a constitutional violation. See id. at 1304–05, 1308.

Danley makes clear that jailers cannot use force in the form of continued confinement that causes a compliant detainee to suffer continued effects of pepper spray. This preexisting precedent clearly established the unlawfulness of Appellees' conduct at the time it occurred.[14] See id. at 1309–10; accord Thomas, 614 F.3d at 1311 (referencing prior decision of this court and others "which have concluded that where chemical agents are used unnecessarily, without penological justification, or for the very purpose of punishment or harm, that use satisfies the Eighth Amendment's objective harm requirement"); Jacoby II, 666 F. App'x at 765–66 (construing Danley as clearly established law in a similar excessive force case where the detainee was pepper sprayed, briefly decontaminated, and then restrained for eight hours). Because we conclude that McCants and Winky violated Mr. Jacoby's clearly established constitutional right, the district court erred in concluding that they were entitled to qualified immunity. We will

[14] This case presented similar facts to the excessive force claim asserted in Jacoby II, 2014 WL 2435655 (S.D. Ala. May 30, 2014). The district court in this case relied on the district court opinion Jacoby II in granting Appellee's motion for summary judgment on March 22, 2016. Jacoby IV, 2016 WL 1117525 at *1 (S.D. Ala. Mar. 22, 2016). Several months later, on November 7, 2016, we reversed the district court in Jacoby II with respect to Mr. Jacoby's excessive force claim. Jacoby II, 666 F. App'x 759 (11th Cir. 2016). In doing so, we relied on Danley, as we do in the present case, as clearly establishing that jailers cannot use force in the form of continued confinement that causes a compliant detainee to suffer continued effects of pepper spray. Id. at 765–66.

accordingly reverse the district court's grant of Appellees' motion for summary judgment as to McCants and Winky on this claim.

B. Inadequate Conditions of Confinement Claims

Next, we consider Mr. Jacoby's argument that the district court improperly granted Appellees' motion for summary judgment as to his conditions of confinement claims. The district court did not reach the merits of these claims, deciding instead that they was barred by res judicata because "they have been litigated and decided adversely against Jacoby in Jacoby I, Jacoby II, and Jacoby III, or they could have been litigated in those actions." Jacoby IV, 2016 WL 1117525, at *9.

> In the Eleventh Circuit, a party seeking to invoke the doctrine [of res judicata] must establish its propriety by satisfying four initial elements: (1) the prior decision must have been rendered by a court of competent jurisdiction; (2) there must have been a final judgment on the merits; (3) both cases must involve the same parties or their privies; and (4) both cases must involve the same causes of action. . . . If even one of these elements is missing, res judicata is inapplicable.

In re Piper Aircraft Corp., 244 F.3d 1289, 1296 (11th Cir. 2001). Next, the court must determine "whether the claim in the new suit was or could have been raised in the prior action; if the answer is yes, res judicata applies." Id. (citation omitted). "Importantly, this bar pertains not only to claims that were raised in the prior action, but also to claims that could have been raised previously." Davila v. Delta Air Lines, Inc., 326 F.3d 1183, 1187 (11th Cir. 2003) (citations omitted).

It is undisputed by the parties that the prior decisions in Jacoby I, Jacoby II, and Jacoby III were rendered by a court of competent jurisdiction. It is likewise undisputed that there was a final judgment on the merits in all three of these cases.

As to the third element, that "both cases must involve the same parties or their privies[,]" In re Piper Aircraft Corp., 244 F.3d at 1296, the district court stated that "[w]hile Defendant Sheriff Mack is the only defendant in this action that was also named in Jacoby II, and Jacoby III, the undersigned finds that there is clear privity between the defendants with respect to Jacoby's claims regarding the conditions in segregation at the Baldwin County facility." Jacoby IV, 2016 WL 1117525, at *10.

As a threshold matter, we note that it is difficult to determine from the district court's opinion which defendants the district court construed Mr. Jacoby's complaint as asserting this claim against. See, e.g., id. (referencing "Defendants" generally, and not by name). Mr. Jacoby contends that he asserted this claim against all Appellants before the district court, while Appellees assert that this claim was only asserted against Mack, Byrne, and Bennett. Construing Mr. Jacoby's complaint liberally, see Erickson v. Pardus, 551 U.S. 89, 94, 127 S. Ct. 2197, 2200 (2007), we conclude that Mr. Jacoby alleged this claim against Appellants Mack, Byrne, and Bennett. Because Byrne is no longer a party to this case, see supra note 1, this claim is only at issue as alleged against Mack and

Bennett on appeal. As the district court noted, Mack was named as a defendant in Jacoby I, Jacoby II, and Jacoby III. Additionally, Bennett was named as a defendant in Jacoby III. 2014 WL 2641834, at *4.

As to the fourth element, that both cases must involve the same cause of action, we consider whether this is true as to Jacoby III, in which both Mack and Bennett were named as defendants. "In determining whether the prior and present causes of action are the same, we must decide whether the actions arise 'out of the same nucleus of operative fact, or [are] based upon the same factual predicate.'" Davila, 326 F.3d at 1187.

In Jacoby III, Mr. Jacoby alleged conditions of confinement claims against Mack that make the same arguments and factual assertions as the present claim. See Jacoby III, 2014 WL 2641834, at *13 (reflecting Mr. Jacoby challenging the conditions of segregation by asserting that he was denied periodicals, stationary, postage, hygienic products, and outdoor recreation while in segregation, while also reciting facts that Mr. Jacoby was forced to sleep one night without a mattress or sheets and was thereafter made to sleep on the floor next to the toilet because he was in a two-man cell with three inmates). Furthermore, in Jacoby III, Mr. Jacoby asserted a conditions of confinement claim predicated on his mental health and his desire to be housed in a separate facility, which the district court concluded was barred by res judicata. Id. at *9 ("Although not specifically made as a claim

in Jacoby 1, Plaintiff's claim that Defendants Byrne and Mack breached his constitutional rights by not having and not placing him in a separate facility for seriously–severely mentally ill inmates could have been raised by Plaintiff in Jacoby 1*;* therefore, that claim is also barred."). These conditions of confinement causes of action arise from the same nucleus of operative facts as those alleged in the present case.[15] See Davila, 326 F.3d at 1187. Although Mr. Jacoby asserted these causes of action in Jacoby III against Mack, while only asserting failure to protect claims against Bennett, he could have brought such conditions of confinement causes of action against Bennett in Jacoby III. Accordingly, the conditions of confinement causes of action raised in Jacoby III serve as a basis for res judicata as to the claim in question against both Mack and Bennett. We will therefore affirm the district court's grant of Appellees' motion for summary judgment as to this claim.

C. Retaliation Claim

Next, we consider Mr. Jacoby's argument that the district court improperly granted Appellees' motion for summary judgment as to his retaliation claim asserted against Lovett, Winky, and McCants. Specifically, Mr. Jacoby claims that

[15] Mr. Jacoby contends that the present conditions of confinement claims do not arise out of the same nucleus of operative facts because he has alleged new facts that Lovett intentionally took Mr. Jacoby's mattress and gave him a new one that she knew was uncomfortable and hurt his back. Because this claim was not alleged against Lovett, this does not affect our analysis.

he was subjected to segregation, pepper spraying, searches, and disciplinary proceedings by the above listed Appellees in retaliation for his filing of grievances and lawsuits.[16]

As a preliminary matter, we note that the district court construed Mr. Jacoby's pro se complaint as alleging a retaliation claim only against Lovett. Jacoby v. Mack, 2016 WL 1117525, at *12. On appeal, Mr. Jacoby argues that this claim was asserted against not only Lovett with respect to being sent to segregation, the pepper spraying, searches, and disciplinary proceedings, but also McCants and Winky with respect to the pepper spraying. Appellants do not refute this argument in their response brief. Liberally construing Jacoby's pro se complaint, see Erickson, 551 U.S. at 94, 127 S. Ct. at 2200, we conclude that Mr. Jacoby asserted retaliation claims against Lovett, McCants, and Winky. Accordingly, Mr. Jacoby's retaliation claim as to McCants's and Winky's involvement in the pepper spraying will be remanded to the district court for consideration. We proceed to consider those claims raised against Lovett and addressed by the district court.

[16] Mr. Jacoby, in his brief contends that Lovett also retaliated against him by causing a drug test to be administered to him. Because Mr. Jacoby did not raise this argument before the district court, we do not consider this argument on appeal. See Millennium Partners, 494 F.3d at 1304.

The First Amendment prohibits prison officials from retaliating against prisoners for exercising their right of free speech by filing lawsuits or grievances. See O'Bryant v. Finch, 637 F.3d 1207, 1212 (11th Cir. 2011); Wright v. Newsome, 795 F.2d 964, 968 (11th Cir. 1986).

> An inmate may maintain a cause of action for retaliation under 42 U.S.C. § 1983 by showing that a prison official's actions were "the result of [the inmate's] having filed a grievance concerning the conditions of his imprisonment." To establish a First Amendment retaliation claim, a prisoner need not allege the violation of an additional separate and distinct constitutional right; instead, the core of the claim is that the prisoner is being retaliated against for exercising his right to free speech. To prevail on a retaliation claim, the inmate must establish that: "(1) his speech was constitutionally protected; (2) the inmate suffered adverse action such that the [official's] allegedly retaliatory conduct would likely deter a person of ordinary firmness from engaging in such speech; and (3) there is a causal relationship between the retaliatory action [the disciplinary punishment] and the protected speech [the grievance]."

O'Bryant, 637 F.3d at 1212 (citations omitted). As to the third element, "[o]nce the plaintiff establishes that the protected conduct was a motivating factor behind the harm, the burden of production shifts to the defendant. The defendant can prevail on summary judgment if it can show it would have taken the same action in the absence of the protected activity." Smith v. Fla. Dep't of Corr., 713 F.3d 1059, 1063 (11th Cir. 2013).

In this case, the parties are in agreement as to the first two elements of Mr. Jacoby's retaliation claim but disagree as to whether he has established a causal relationship between Lovett's complained of conduct and Mr. Jacoby's filing of

grievances and lawsuits. With these guiding principles in mind, we consider each argument underlying Mr. Jacoby's retaliation claim.

1. Mr. Jacoby's argument that Lovett retaliated against him by sending him to segregation for tobacco products that were not his.

Mr. Jacoby, in his amended complaint, contends that he was sent to segregation when contraband tobacco was located in his cell, even after another inmate confessed that the tobacco was his. Mr. Jacoby further contends that he and the inmate that confessed to possessing the tobacco were taken to segregation while the other inmates in his cell who could have been implicated in the infraction were allowed to stay in general population. The district court did not address this allegation in its opinion, despite it being raised in both Mr. Jacoby's initial complaint and his amended complaint. Mr. Jacoby's verified response in opposition to Defendants' motion for summary judgment before the district court similarly outlined facts that Lovett placed Jacoby in lockup for tobacco that another inmate admitted to owning. Further, despite Appellee's contention that Mr. Jacoby "never mentioned any other persons who were supposedly treated differently than he" with respect to this incident, Mr. Jacoby's verified response states that "he was the only inmate locked up despite the fact that he shared a cell with three other inmates." Accordingly, this claim will be remanded to the district court for consideration.

2. Mr. Jacoby's argument that Lovett retaliated against him by pepper spraying him.

As to this argument, as discussed above, Lovett was involved in the pepper spraying of Mr. Jacoby only to the extent that he ordered Winky to pepper spray Mr. Jacoby if he continued to be combative and refused to follow instructions. Mr. Jacoby has not presented any evidence of Lovett having retaliatory animus as to the pepper spraying. See O'Bryant, 637 F.3d at 1219. Accordingly, the district court properly granted Appellees' motion for summary judgment as to this portion of Mr. Jacoby's retaliation claim.

3. Mr. Jacoby's argument that Lovett retaliated against him by searching his cell and strip searching him on multiple occasions.

Mr. Jacoby contends that from January 27–29, 2013, Lovett locked him down in his cell and had his cell searched and his person strip searched several times while not subjecting the other twenty-seven inmates on his block to such searches. Mr. Jacoby contends that Lovett did this in retaliation for his filing of multiple grievances and lawsuits. Mr. Jacoby has submitted nine grievances and requests related to his pepper spraying that he filed just before and during the period of these searches. Lovett, on the other hand, asserts in his affidavit that these searches of his cell and strip searches were routine and entailed searching all inmates, not just Mr. Jacoby.

Reviewing the evidence in the light most favorable to Mr. Jacoby, we conclude that a dispute of material fact exists as to whether his protected conduct was a motivating factor behind these searches.[17] See Smith, 713 F.3d at 1063 (finding that an inmate had established that one could conclude that protected conduct was a factor to his being transferred where affidavits stated that the prisoner was transferred after filing lawsuits/grievances and that inmates who filed lawsuits/grievances were transferred more than average). As to the burden shifting analysis, Appellee's suggest that Mr. Jacoby would have been on the receiving end of identical action in the absence of his protected activity, citing a "zero tolerance policy" enacted during Mr. Jacoby's time at the jail.[18]

Considering the evidence in a light most favorable to Mr. Jacoby, this argument fails to explain why Mr. Jacoby was singled out in these searches and thus fails to establish that these searches would have occurred absent his protected activity. See id. at 1064. The facts proffered by Mr. Jacoby but disputed by Appellees set forth a violation of a clearly established constitutional right. Because a dispute as to a material fact exists, the district court erred in granting Appellees' motion for summary judgment as to this portion of Mr. Jacoby's retaliation claim.

[17] Specifically, Mr. Jacoby asserts that in a two day period his person was strip searched four times and his cell searched three times, while no other inmates in his block were subjected to such treatment.

[18] Such a zero tolerance policy presumably would have applied to all inmates, not selectively as the evidence pointed to by Mr. Jacoby suggests.

4. Mr. Jacoby's argument that Lovett retaliated against him by instituting disciplinary proceedings for possession of a weapon.

Finally, Mr. Jacoby contends that Lovett retaliated against him by instituting disciplinary proceedings for his possession of a weapon. While at the Baldwin County jail, Mr. Jacoby was found guilty of possessing a weapon, specifically a 1.5 lb. block of crushed soap. We have held, prior to the underlying conduct in question, that an inmate cannot state a First Amendment retaliation claim for a prison disciplinary charge where the inmate was found guilty of the behavior underlying said charge after being afforded adequate due process. O'Bryant, 637 F.3d at 1215. As we conclude, infra, Mr. Jacoby was afforded due process in the hearing on this matter. Accordingly this cannot serve as a basis for Mr. Jacoby's retaliation claim against Lovett. The district court appropriately granted summary judgment as to this portion of Mr. Jacoby's retaliation claim.

D. Due Process Claim

Mr. Jacoby contends that the district court erred in granting Appellees' motion for summary judgment as to his due process claim asserted against Mack, Bennett, and Lovett for alleged violations surrounding his February 4, 2013 disciplinary hearing for his possession of a weapon charge.[19] Specifically, Mr.

[19] Before the district court, Mr. Jacoby also asserted a due process violation claim concerning the January 27–29, 2013 searches of his cell. See Jacoby IV, 2016 WL 1117525, at *11. Mr. Jacoby does not re-raise these arguments on appeal.

Jacoby alleges that due process violations occurred during this hearing because (1) he was unable to prepare a defense because he did not receive a copy of the disciplinary charges in a timely manner and when he did receive paperwork there was no hearing date on it; (2) his paperwork was neither filled out properly nor notarized; and (3) that his hearing was not recorded.[20] Mr. Jacoby also raises an argument on appeal regarding his placement in administrative segregation prior to his hearing for possession of contraband tobacco, of which he was ultimately found not guilty. Mr. Jacoby raised this argument before the district court, but the court did not address it. We address this argument on appeal, as all of Mr. Jacoby's due process arguments are controlled by the same principle.

In Jacoby III, we held, as a matter of first impression, that pretrial detainees are "entitled to the due process protections enshrined in Wolff before being placed in disciplinary segregation." 835 F.3d at 1350 (referencing Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963 (1974)). In other words, prior to Jacoby III, it was not clearly established in this Circuit that pretrial detainees had a protected liberty

[20] On appeal Mr. Jacoby asserts that he was subjected to administrative segregation prior to his hearing on the weapons charge and argues that this was a due process violation. However, this argument was not raised before the district court and those facts asserted in Mr. Jacoby's appellate brief are directly contradicted by assertions made in Mr. Jacoby's amended complaint.

Furthermore, Mr. Jacoby asserts on appeal that his hearing on the weapons charge was not impartial as officers that were a part of the hearing were also involved in the initial incident of the alleged rule violation. This argument, however, was not raised by Mr. Jacoby before the district court. We do not consider either of these arguments on appeal. Millennium Partners, 494 F.3d at 1304.

interest sufficient to trigger due process protections prior to being punished for violating a jail rule. See id. at 1348–50. The events underlying Mr. Jacoby's due process claim in the present case occurred in 2013, prior to Jacoby III's holding. See Belcher, 30 F.3d at 1400 n.9. Accordingly, Appellants are entitled to qualified immunity as to Mr. Jacoby's due process claims and the district court appropriately granted summary judgment in their favor.

E. Supervisory Liability Claims

Finally, Mr. Jacoby contends that the district court erred in granting Appellees' motion for summary judgment as to his supervisory liability claims alleged against Mack and Bennett. Mr. Jacoby asserts that the Baldwin County Jail had policies of pepper spraying inmates and not properly decontaminating them and sending pretrial detainees to administrative segregation for extended periods of time. Mr. Jacoby asserts that Mack and Bennett were aware of these policies and allowed their subordinates to violate clearly established law without proper reprimands.

As a general matter, "[i]t is well established in this Circuit that supervisory officials are not liable under § 1983 for the unconstitutional acts of their subordinates on the basis of respondeat superior or vicarious liability." Keith v.

DeKalb Cty., Ga., 749 F.3d 1034, 1047 (11th Cir. 2014) (citation omitted). In order "to hold a supervisor liable a plaintiff must show that the supervisor either directly participated in the unconstitutional conduct or that a causal connection exists between the supervisor's actions and the alleged constitutional violation." Id. at 1047–48 (citation omitted).

> The necessary causal connection can be established "when a history of widespread abuse puts the responsible supervisor on notice of the need to correct the alleged deprivation, and he fails to do so." Alternatively, the causal connection may be established when a supervisor's "custom or policy . . . result[s] in deliberate indifference to constitutional rights" or when facts support "an inference that the supervisor directed the subordinates to act unlawfully or knew that the subordinates would act unlawfully and failed to stop them from doing so." "The standard by which a supervisor is held liable in [his] individual capacity for the actions of a subordinate is extremely rigorous."

Cottone v. Jenne, 326 F.3d 1352, 1360–61 (11th Cir. 2003) (citations omitted).

First, as to Mr. Jacoby's claim that pepper spraying inmates and not properly decontaminating them constituted a policy and procedure of Baldwin County Jail, Mr. Jacoby asserts, without citation, that he wrote to Mack and Bennett about these issues but they were not addressed. Mr. Jacoby presents no evidence whatsoever—nor have we located any evidence in the record—from which we could conclude that Mack and Bennett were aware of a history of widespread abuse, established such a policy, directed their subordinates to act in an unconstitutional fashion, or knew that their subordinates would act in an

unconstitutional fashion and failed to prevent them from doing so. See id.; see also Atlanta Gas Light Co. v. UGI Utils., Inc., 463 F.3d 1201, 1208 n.11 (11th Cir. 2006) ("Neither the district court nor this court has an obligation to parse a summary judgment record to search out facts or evidence not brought to the court's attention. Notwithstanding this, we have reviewed sufficient portions of the record to give us comfort that able counsel have not overlooked significant evidence in their briefs to the district court and this court."). Accordingly, the district court appropriately granted Appellees' motion for summary judgment as to this portion of Mr. Jacoby's supervisory liability claim.

Second, as to Mr. Jacoby's claim that sending pretrial detainees to crowded administrative segregation cells for extended periods of time without periodicals, hygiene products, or recreation time constituted a policy and procedure at Baldwin County Jail, Mr. Jacoby neither explains how Mack and Bennett have a causal connection to this policy nor cites any record evidence from which we could arrive at such a conclusion. Accordingly, because Mr. Jacoby has failed to establish that either Mack or Bennett have a causal connection to the allegedly unconstitutional policies at Baldwin County Jail, the district court appropriately granted Appellees' motion for summary judgment as to Mr. Jacoby's supervisory liability claim as well.

IV. CONCLUSION

In summary, we conclude for the reasons set forth above that the district court erred in granting Appellees' motion for summary judgment as to Mr. Jacoby's excessive force claim as to McCants and Winky (but appropriately granted summary judgment as to Lovett), appropriately granted summary judgment as to Mr. Jacoby's condition of confinement claims, erred in part and appropriately granted in part summary judgment as to Mr. Jacoby's retaliation claim, appropriately granted summary judgment as to Mr. Jacoby's due process claim, and appropriately granted summary judgment as to Mr. Jacoby's supervisory liability claim.

AFFIRMED IN PART, REVERSED AND REMANDED IN PART.