[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-10936
Non-Argument Calendar

D.C. Docket No. 3:15-cv-00202-LC-EMT

JEAN-EWOLL JEAN-DENIS,

Plaintiff-Appellant,

versus

V. MASON, P. REYES,
Lieutenant,
B. TURNER,
Sergeant,
V. MASON,
Officer,
M. NICHOLS,
Nurse Practitioner,

Defendants-Appellees,

JOHN DOE, SR.
One of G. Dormitory's Offices, et. al,

Defendants.

Appeal from the United States District Court
for the Northern District of Florida

(May 20, 2021)

Before JORDAN, ROSENBAUM, and GRANT, Circuit Judges.

PER CURIAM:

Jean-Ewoll Jean-Denis, a Georgia state prisoner, appeals the district court's grant of summary judgment against him on his claims of excessive force under 42 U.S.C. § 1983.[1] Jean-Denis claimed that three corrections officers—Virgil Mason, Peter Reyes, and Brandon Turner—assaulted him without reason on January 27, 2015, while he was incarcerated at Santa Rosa Correctional Institution. On appeal, he argues that genuine issues of material fact preclude summary judgment. We agree and, accordingly, vacate and remand for further proceedings.

I.

[1] Jean-Denis also brought a § 1983 claim of deliberate indifference to medical needs and a state-law claim of medical negligence against nurse M. Nichols. The district court granted summary judgment in favor of Nichols, and Jean-Denis has abandoned any challenge to that ruling by failing to raise the issue on appeal. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014) (issues not raised on appeal are abandoned). Nichols's motion to dismiss the appeal as to her is **DENIED as moot.**

The parties offer sharply diverging versions of the relevant events, some of which were captured on video. We begin with a summary of these competing versions and the relevant video evidence.

A.

According to Jean-Denis, the relevant events began when he declared a "psychological emergency" just before noon on January 27, 2015. Two corrections officers, Mason and nondefendant Travis Patt, escorted him to see a mental-health counselor. Mason accused Jean-Denis of "running" from a disciplinary report for masturbating in front of a nurse the day before. And Mason threatened to starve, beat, and gas Jean-Denis if he did not abandon his emergency claim. Mason then offered not to starve or gas him or give him a disciplinary report if he agreed to get his "ass whipped" and not grieve the beating.

After the mental-health assessment, Turner escorted Jean-Denis to cell G3114 and ordered him to lie face down on the dormitory floor. Jean-Denis did so. Soon after, corrections officer Peter Reyes walked up and kicked him in the face. As he lay prone and handcuffed, corrections officers Mason, Patt, Reyes, and Turner "assaulted [him], beat [him] up, and tried to push [him] in cell G3114." He specifically remembered being kneed in the back and having his arms grabbed and twisted. Throughout these events, Jean-Denis claims, he did not lunge at, strike, push, resist, or threaten any of the officers, nor did he break any prison rules.

Jean-Denis was taken for medical treatment in a wheelchair. He claimed that he was injured to the extent that he believed multiple bones were broken and that the first nurse to assess him stated that his lower back, his left forearm and wrist, and two fingers on his left hand were fractured. He was then seen by a second nurse, however, who "deliberately chose not to treat [him] for [his] then-serious medical need[s]."

B.

The officers' version of events begins with Jean-Denis being escorted to cell G3114 by Turner to be placed on property restriction. Jean-Denis refused to go inside the cell and instead knelt to lie on the floor. He then "refused all orders to stand up." Mason, Patt, and Reyes arrived to help. Jean-Denis was not responsive to commands and asked to see medical providers. Reyes ordered Jean-Denis to stand up so he could be seen by medical providers, and Mason and Reyes attempted to lift him to his feet. As they did so, Jean-Denis "lunged" at Turner, striking him in the chest and attempting to push past him. Turner redirected Jean-Denis's momentum into a prone position on the floor. The other officers used force to subdue Jean-Denis as he remained combative, despite orders to stop. In the scuffle, Jean-Denis struck Turner in the abdomen and lower rib area with his knee. Eventually, the officers were able to place leg irons on Jean-Denis, and he ceased his combative

behavior. Jean-Denis was then taken for medical attention, but no significant injuries were noted.

C.

The record also contains "fixed wing" video footage showing Jean-Denis being escorted to cell G3114 by an officer on the morning in question. The video is blurry, choppy, and shot from a distance, and there is no audio. In the video, Jean-Denis laid down in front of the cell door at 11:29 a.m. He remained on the floor, apparently untouched, until 11:40 a.m. By that time, three other officers had arrived and were standing around him. From the video's perspective, Jean-Denis and the fourth officer to arrive are behind, and partially obscured by, the other three officers. At 11:41 a.m., a scuffle ensued, though it's difficult to make out any precise details. Jean-Denis can be seen briefly upright before being taken to the ground by the officers and held down. At 11:43 a.m., the officers pick up Jean-Denis from the ground and walk him away.

II.

In April 2015, Jean-Denis filed a civil-rights lawsuit in federal court based on these events under 42 U.S.C. § 1983. Relevant here are his § 1983 claims of excessive force against corrections officers Mason, Reyes, and Turner.

After discovery, the defendants jointly moved for summary judgment. They argued that Jean-Denis's version of events was blatantly contradicted by evidence

in the record, including the video footage and medical documentation showing the absence of any serious injury. In response, Jean-Denis contended that numerous material facts were still in dispute.

In a report and recommendation ("R&R") issued on January 14, 2019, a magistrate judge recommended that the district court grant the defendants' motion for summary judgment. In relevant part, the magistrate judge concluded that Jean-Denis's assertions of being punched and kicked hard enough to break his bones were squarely contradicted by the video footage, which did not show "any accelerated movement that might resemble a kick or a thrown fist; it only shows the officers holding onto him and grappling with him while trying to gain control over him on the floor." The magistrate judge also inferred from the video that Jean-Denis was "resisting orders from the officers to enter his cell, and after that, resisting orders to stand, so that he could be escorted." On this point, the magistrate judge noted that Jean-Denis "does not contest Defendants' assertion that the officers ordered him to stand, and it is nevertheless abundantly clear from the video that that was the officers' intent." Because it was "clear" that Jean-Denis resisted, the magistrate judge stated, the defendants were entitled to use physical force to enforce compliance with institutional rules. Finally, the court found that any force used was *de minimis*, given medical evidence establishing that Jean-Denis did not suffer any broken bones or other severe injuries.

The magistrate judge directed the parties to file any objections to the R&R within fourteen days after being served a copy. Meanwhile, Jean-Denis submitted a notice of change of address on January 14, 2019, which was received by the court two days later. Jean-Denis then submitted objections to the R&R on February 6, 2019. No other objections were filed.

In his objections, Jean-Denis argued that the video footage did not directly contradict his assertions regarding the defendants' alleged use of excessive force or the lack of resistance on his part. He further objected to the magistrate judge's observation that he did not contest that he was ordered to stand, pointing out that he had denied breaking any prison rules, which included following officer commands. Jean-Denis also pointed to purported inconsistencies in the officers' versions of events, and he asserted that his medical records were inaccurate because he received inadequate medical treatment and the nurses acted in concert with the officers to not document his injuries.

On February 14, 2019, the district court granted summary judgment in favor of the defendant officers. The court stated that it had "made a *de novo* determination of the timely filed objections," and that after considering the R&R "and the

objections thereto" it had determined that the R&R should be adopted. This appeal followed, and we appointed counsel for the appeal.[2]

Jean-Denis, through court-appointed counsel, now argues that the district court erred both procedurally and substantively. Procedurally, he argues, the court failed to review his timely objections to the R&R. And the court erred substantively, in his view, by granting summary judgment despite genuine factual disputes.

III.

Beginning with Jean-Denis's procedural argument, district courts "must determine de novo" any part of the magistrate judge's R&R that has been properly objected to. Fed. R. Civ. P. 72(b)(3); *see* 28 U.S.C. § 636(b)(1). Objections generally must be filed within 14 days after being served with a copy of the R&R. Fed. R. Civ. P. 72(b)(2).

Here, our review of the record indicates that the district court conducted a *de novo* review of Jean-Denis's objections to the R&R. The court stated that it had made "a *de novo* determination of the timely filed objections" and had considered the R&R "and the objections thereto." While there is some ambiguity about whether the objections were timely and whether Jean-Denis was properly informed of the time period for objecting, the court's comments indicate that it treated Jean-Denis's

[2] We express our appreciation to appointed counsel in this case, Jeffrey H. Garland, for his able representation of Jean-Denis on appeal.

objections—the only objections filed in this case—as timely filed for purposes of its decision. We do the same.

IV.

Turning to the substance of the district court's decision, we review the grant of summary judgment *de novo*, viewing the evidence in the light most favorable to the non-moving party, Jean-Denis, and drawing all reasonable inferences in his favor. *Pourmoghani-Esfahani v. Gee*, 625 F.3d 1313, 1315 (11th Cir. 2010). In doing so, we do not make credibility determinations or weigh conflicting evidence. *Strickland v. Norfolk S. Ry. Co.*, 692 F.3d 1151, 1154 (11th Cir. 2012). So "when conflicts arise between the facts evidenced by the parties, we credit the nonmoving party's version." *Evans v. Stephens*, 407 F.3d 1272, 1278 (11th Cir. 2005) (*en banc*) (emphasis omitted).

Nevertheless, "[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Scott v. Harris*, 550 U.S. 372, 380 (2007). "Thus, where an accurate video recording completely and clearly contradicts a party's testimony, that testimony becomes incredible." *Morton v. Kirkwood*, 707 F.3d 1276, 1284 (11th Cir. 2013). But video evidence may not be obviously contradictory if it fails to convey spoken words or to provide an unobstructed view of the events.

Pourmoghani-Esfahani, 625 F.3d at 1315 (declining to rely on video evidence to discredit the plaintiff's version of events entirely because the video lacked sound and was periodically obstructed).

A.

The Eighth Amendment prohibits prison officers from using excessive force against prisoners. *Thomas v. Bryant*, 614 F.3d 1288, 1303–04 (11th Cir. 2010). The "core judicial inquiry" for an excessive-force claim is "whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." *Wilkins v. Gaddy*, 559 U.S. 34, 37 (2010) (quoting *Hudson v. McMillian*, 503 U.S. 1, 7 (1992)).

We have identified five factors to help evaluate whether force was applied maliciously or sadistically: (1) the need for force; (2) the relationship between that need and the amount of force used; (3) the extent of the resulting injury; (4) the extent of the threat to the safety of staff and inmates, as reasonably perceived by the responsible official on the basis of facts known to them; and (5) any efforts made to temper the severity of the use of force. *Fennell v. Gilstrap*, 559 F.3d 1212, 1217–20 (11th Cir. 2009). When evaluating whether the force used was excessive, we give broad deference to prison officers acting to preserve discipline and security. *Bennett v. Parker*, 898 F.2d 1530, 1533 (11th Cir. 1990). And prison officers

generally are authorized to use force when a prisoner repeatedly fails to obey an order. *Danley v. Allen*, 540 F.3d 1298, 1307 (11th Cir. 2008).

While the extent of the injury suffered is relevant, the Supreme Court has "rejected the notion that 'significant injury' is a threshold requirement for stating an excessive force claim." *Wilkins*, 559 U.S. at 37. Thus, while *de minimis* uses of force, absent exceptional circumstances, do not violate the constitution, *de minimis* injury does not necessarily bar a prisoner's excessive-force claim. *Id.* at 37–38.

B.

Here, the district court erred by making inferences from the fixed-wing video to discredit Jean-Denis's version of events. This video does not "completely and clearly contradict[]" his version of events because it fails to convey any audio or to provide an unobstructed and clear view of the events. *See Morton*, 707 F.3d at 1284; *Pourmoghani-Esfahani*, 625 F.3d at 1315. Because there is no audio, we cannot rule out, as Jean-Denis claims, that he was ordered to lie on the ground in front of the cell, and that he was not ordered to stand up or to enter the cell.[3] Not only that, but the video itself is blurry, choppy, and shot from a distance, and its view of Jean-Denis and some of the officers is periodically obstructed. For instance, there is a moment shortly after the fourth officer arrives when Jean-Denis and the fourth

[3] While Jean-Denis did not explicitly deny the officers' claim that he was ordered to stand up, no such order was part of his version of events, and he denied breaking any prison rules, like the rule requiring compliance with officer commands, during this encounter.

officer cannot be seen behind the other three officers. This appears to have been around the time that Jean-Denis claims he was kicked in the face by Reyes. Nor is it clear from the video how the scuffle between Jean-Denis and the officers began and unfolded. So we cannot say with certainty based on the video that Jean-Denis was not kicked, punched, or kneed despite complying with the officers' commands and not offering any resistance.

To be sure, we agree with the district court that the video does not clearly support Jean-Denis's claims. And the court's interpretation of what occurred on the video—that Jean-Denis refused orders to stand up and then was subdued by the officers using no force beyond "holding onto him and grappling with him while trying to gain control over him on the floor"—is certainly reasonable. But it is not the courts' role to weigh the evidence or make credibility determinations at summary judgment; those matters are for the jury. *See Strickland*, 692 F.3d at 1154. Because the video does not completely or clearly contradict Jean-Denis's testimony, we must accept his version of the events. *See Morton*, 707 F.3d at 1284.

C.

Construing the evidence, including the video, in the light most favorable to Jean-Denis, we conclude that summary judgment on his excessive-force claims was not appropriate. Most importantly, there was no need for force—Jean-Denis had complied with an order to lie on the floor, he was handcuffed, and he did not

otherwise refuse to comply with an officer command or offer resistance to the officers.[4] Nor was the amount of force used *de minimis*, despite the lack of documented injuries.[5] *See Wilkins*, 559 U.S. at 38 (stating that a prisoner "does not lose his ability to pursue an excessive force claim merely because he has the good fortune to escape without serious injury"). Jean claims he was kicked in the face while laying prone and handcuffed on the floor, kneed in the back, and beaten up. Therefore, even if Jean-Denis overstates his alleged injuries, the officers are not entitled to judgment as a matter of law on that basis. *See id.*

In sum, Jean-Denis's version of events depicts an unprovoked physical assault by four corrections officers with no legitimate penological purpose. A reasonable jury crediting his testimony could conclude that the force was not "applied in a good-faith effort to maintain or restore discipline," but rather "maliciously and sadistically to cause harm." *Wilkins*, 559 U.S. at 37.

[4] The officers point out that Jean-Denis admitted to screaming during the encounter, which they say created a disturbance warranting the use of force. But his testimony reflects that he screamed because of the officers' unprovoked use of force. So even if some force was warranted in response to Jean-Denis's screaming, that justification would not apply to all force used during the encounter, under Jean-Denis's version of the facts.

[5] Notably, Jean-Denis alleged that the medical treatment he received after the officers' use of force was inadequate and did not accurately document the extent of his injuries.

We therefore vacate the grant of summary judgment on Jean-Denis's claims against Mason, Reyes, and Turner, and we remand for further proceedings consistent with this opinion.

VACATED AND REMANDED.