[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 22-10955

Non-Argument Calendar

SHAMPOIRE VALENTINO ORANGE,

Plaintiff-Appellant,

versus

PAYTON A. PRESCOTT,
Officer, Baker County Jail,
J. ROBERTS,
Sgt., Baker County Jail,
ALEXANDER MCKENZIE,
L.T., Baker County Jail,
DONALD KENDRICK,
Officer, Baker County Jail,
HENRY REED,

Officer, Baker County Jail, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:20-cv-00842-BJD-PDB

Before ROSENBAUM, LAGOA, and BRASHER, Circuit Judges.

PER CURIAM:

Shampoire Orange appeals the district court's grant of summary judgment on his complaint that various officers at the Baker County Jail used excessive force against him during incidents on October 22, 2019, and October 27, 2019. After careful review of the record and the parties' briefs, we affirm.

I. Background

This action arises from two incidents in October 2019, while Orange was an inmate at the Jail.[1] We summarize the relevant facts in the light most favorable to Orange, the nonmoving party

[1] Orange was not a pretrial detainee at that time. Rather, it appears he was waiting for transfer to federal custody after having had been convicted and sentenced in federal court in March 2019. *See United States v. Orange*, Case No. 5:17-cr-5-LGW-BWC (S.D. Ga. 2019).

at summary judgment, crediting his "version of the record evidence" unless "obviously contradictory video evidence is available." *Pourmoghani-Esfahani v. Gee*, 625 F.3d 1313, 1315 (11th Cir. 2010).

A. October 22, 2019

On October 22, 2019, Orange was transferred from general population to Dorm A-7, an isolation dorm. Jail Officers Kristopher Kirkland, Payton Prescott, and Terrance Roberts, escorted Orange in handcuffs, and Officer Donald Kendrick met them in Dorm A-7.

No cell room was immediately available, so the officers spent the next several minutes determining where Orange would be housed in the two-tiered dorm. Officer Henry Reed arrived during this time. Meanwhile, Orange informed the officers that he had a "bottom bunk bottom tier profile" due to major knee injuries, specifically a ruptured or torn tendon in both knees.

After about seven minutes, the officers determined that Orange would be housed in a cell on the upper tier, which first had to be vacated by the current occupant. To reach the upper tier, Orange had to ascend a staircase of approximately sixteen continuous metal steps.

Roberts testified that, before assigning Orange's cell, he "called medical to check on Mr. Orange's assignment and was informed that Mr. Orange did have a bottom bunk assignment, but did not have a bottom tier assignment." Orange likewise stated that Roberts told him he called medical to check Orange's profile. Video of the incident confirms that Roberts, about five minutes

after they arrived at Dorm A-7, used the desk phone for approximately one and a half minutes, the video lacks audio of the call. Nor does any evidence contradict Roberts's testimony that he checked with medical about Orange's profile. Soon after this phone call concluded, it appears the officers finalized their housing decision and told the current occupant of the cell he needed to gather his things.

When Orange learned of the housing assignment, he protested that he could not go up or down stairs because he would fall and hurt himself due to his knee injuries. Roberts responded, "you're a bitch and you're going up the stairs," and told Orange to move to the base of the stairs. As the officers waited for the cell to be cleared, Orange twice rolled up his right pant leg to about his right knee for the officers. According to Orange, he had previously suffered patellar tendon ruptures in both knees, causing his kneecap to move five inches up his thigh and making "the imprint of [his] knee bones" visible. The video does not reflect that Orange showed the officers his thigh. Orange pled with the officers to "call medical" and check his medical records, which would show his MRI results and an appointment to see an orthopedic doctor, but they refused to do so.

Once the assigned cell was vacant, Prescott and Kirkland grabbed Orange's arms from either side, forced him to the bottom of the staircase, and "started pushing [him] up the first step." Orange's legs buckled immediately on the first step, so he grabbed the railing to his right with both hands to prevent himself from falling.

Roberts ordered him to let go of the railing and go up. Orange responded that he would fall if he let go and could not proceed due to his knee injuries. Roberts again ordered him to let go and go up, but Orange replied that he would fall.

Prescott took out a canister of Oleoresin Capsicum ("OC") spray and sprayed Orange in the face in several bursts. Orange let go of the railing and fell backwards onto the floor. He rolled onto his stomach and attempted to sit up, saying he could not breathe and asking for water for his eyes. Roberts pulled Orange backwards, turned him around, and attempted to subdue him facedown on the floor. Another officer, Alexander McKenzie, arrived around this time and assisted Roberts in subduing Orange on the ground, while Reed wheeled over a restraint chair.

The video shows Orange attempting to push up with his arms and possibly sit up while Roberts and other officers were attempting to force him down. Orange testified that he was attempting to wipe his eyes with his shirt and that he asked for water. Roberts said he was "not going to get any," and then deployed OC spray in Orange's face at short range. After that, the officers lifted Orange off the ground, placed him in the restraint chair, and strapped him down.

Because Orange had OC spray in his nose and mouth, he was having trouble breathing or swallowing. As a result, he spat down onto the front of his jumpsuit. An officer told him to stop spitting, and McKenzie placed a "spit hood"—a mesh hood with an elastic bottom—over his head. The hood interfered with Orange's

breathing. After Orange spat again, into the hood this time, an officer turned the hood around so that there was a plastic cover over his mouth and nose, which made it even harder to breathe.

Orange was taken to medical and seen by a nurse, who poured water in his eyes. As soon as he could breathe a little better, he asked the nurse to check his medical file and tell the officers he had a major knee injury and could not go up or down stairs. The nurse said she would "look it up for the officers." Soon after, Orange was rolled back to Dorm A-7, where officers unstrapped him from the restraint chair and dragged him up the stairs to the upper tier. He was permitted to shower, though the burning continued throughout the night.

The next morning, Orange was moved to a cell on the bottom tier in Dorm A-7. The lieutenant officer who informed Orange and helped him downstairs told him that, due to his knee injuries, he was "never supposed to have been placed up the stairs." In addition, Prescott wrote a disciplinary report against Orange for the above events, but it was "thrown out" because Orange "really couldn't go up the stairs."

B. October 27, 2019

On October 27, 2019, Orange was in his cell in Dorm A-7 when Kirkland came on shift at approximately 6:00 p.m. Reed was also on duty. Kirkland walked past his cell and asked "how [he] liked the OC spray," and they "had a few words" before Kirkland continued his rounds. About an hour later, Kirkland refused

Orange's request to have his blood pressure checked like some other inmates in Dorm A-7, and they "had words about that" as well.

At approximately 8:40 p.m., Orange was in his cell talking to another inmate through the vent. Kirkland approached and ordered Orange to stop talking. Orange responded, "this is not a library[,] this [is] isolation[,] and there's nothing in the jail handbook [that] say[s] I can't talk." Kirkland stepped closer, opened the door flap, and started spraying Orange in the face through the flap with OC spray. Orange grabbed a blanket to block the spray, but Kirkland "continued to spray all over [his] cell." Kirkland then ordered Orange to "cuff up" at the cell door, but Orange replied that he did not feel safe with Kirkland, and he asked to see a supervisor. The supervisor arrived within a few minutes, and Orange submitted to being handcuffed. He was taken to medical, where his eyes were washed with water, and then taken back to the dorm, where he was permitted to decontaminate. Later, a lieutenant officer came by Orange's jail cell and stated that "the use of force was unnecessary and was against jail policy."

Kirkland's report about the incident reflects that, on the night of October 27, Orange was "being disruptive and causing several disturbances" by yelling obscenities and making derogatory remarks. After Kirkland put a black security curtain over the window of his cell door—which can be seen on the video—Orange continued to be disruptive, causing other inmates to become disruptive. After Orange refused Kirkland's order to cease his disruptive

behavior, Kirkland administered three short bursts of OC spray to Orange's face and torso and then ordered him to cuff up at the door.

II. Procedural History

Orange filed his initial 42 U.S.C. § 1983 civil-rights complaint in July 2020 and an amended complaint in February 2021. He alleged that the jail officers involved in the incidents on October 22 and October 27—Kendrick, Kirkland, McKenzie, Prescott, Reed, Roberts, and Adolphus Warren—used unconstitutional excessive force against him or failed to intervene, and that a nurse was deliberately indifferent to his serious medical needs. The nurse filed a motion to dismiss, while the officers moved for summary judgment.

The district court granted the nurse's motion to dismiss and the officers' motion for summary judgment. Orange has not briefed the dismissal of his claim for deliberate indifference against the nurse, so we do not address that claim further. *See Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008) ("[I]ssues not briefed on appeal by a pro se litigant are deemed abandoned.").

Instead, our focus is the grant of summary judgment. The district court reasoned that the first use of OC spray on October 22 was justified because Orange defied multiple orders to climb the stairs, and there was no evidence to contradict Roberts's testimony that he checked with medical and was told that Orange did not have a bottom tier assignment. The court further concluded that

the second use of OC spray on October 22, as well as the spit hood and restraint chair, were reasonable responses to Orange's non-compliance and his spitting, and that the officers took steps to temper the severity of their response by taking him to medical and permitting him to decontaminate. As for the October 27 incident, the court determined that using OC spray was not excessive force given the evidence that Orange had disobeyed a direct order to stop talking and been "unruly and yelling for hours." Orange appeals.

III. Standard of Review

We review the grant of summary judgment *de novo*, viewing the evidence in the light most favorable to the nonmoving party, Orange, and drawing all reasonable inferences in his favor. *Pourmoghani-Esfahani*, 625 F.3d at 1315. Summary judgment is appropriate only if no reasonable jury could return a verdict in favor of the nonmoving party. *Underwood v. City of Bessemer*, 11 F.4th 1317, 1327 (11th Cir. 2021). Because Orange is proceeding *pro se*, we liberally construe his filings. *Trawinski v. United Techs.*, 313 F.3d 1295, 1297 (11th Cir. 2002).

IV. Discussion

The Eighth Amendment forbids officers 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) (quotation marks omitted); *see Hudson v. McMillan*, 503 U.S. 1, 9 (1992) ("When prison

officials maliciously and sadistically use force to cause harm, contemporary standards of decency always are violated."). Thus, the official must have "acted with a sufficiently culpable state of mind." *Sconiers v. Lockhart*, 946 F.3d 1256, 1265 (11th Cir. 2020) (quotation marks omitted).

To determine whether force was applied maliciously and sadistically to cause harm, we consider the need for force, the amount of force used, the extent of any injury inflicted, the threat reasonably perceived by the responsible official, and any efforts made to temper the severity of the use of force. *Danley v. Allen*, 540 F.3d 1298, 1307 (11th Cir. 2008), *overruled on other grounds as recognized by Randall v. Scott*, 610 F.3d 701, 709 (11th Cir. 2010); *see Whitley v. Albers*, 475 U.S. 312, 320–21 (1986). In conducting this evaluation, "[w]e examine the facts as reasonably perceived by [the responsible officials] on the basis of the facts known to [them] at the time." *Fennell v. Gilstrap*, 559 F.3d 1212, 1217–18 (11th Cir. 2009), *abrogated on other grounds as recognized by Crocker v. Beatty*, 995 F.3d 1232, 1248 (11th Cir. 2021).

Based on these factors, "inferences may be drawn as to whether the use of force could plausibly have been thought necessary, or instead evinced such wantonness with respect to the unjustified infliction of harm as is tantamount to a knowing willingness that it occur." *Skrtich v. Thornton*, 280 F.3d 1295, 1300–01 (11th Cir. 2002), *overruled on other grounds by Pearson v. Callahan*, 555 U.S. 223 (2009). "Unless it appears that the evidence, viewed in the light most favorable to the plaintiff, will support a reliable inference of

wantonness in the infliction of pain . . . , the case should not go to the jury." *Whitley*, 475 U.S. at 322.

We have recognized that "correctional officers in a prison setting can use pepper-spray or a takedown to subdue an inmate as long as a valid penological reason supports the use of such force." *Sconiers*, 946 F.3d at 1265. Pepper spray may be used to control unruly inmates, and guards "need not wait until disturbances reach dangerous proportions before responding." *Danley*, 540 F.3d at 1307. Nor are guards required to "convince every inmate that their orders are reasonable and well thought out." *Id.* We must give "a wide range of deference to prison officials acting to preserve discipline and security." *Sears v. Roberts*, 922 F.3d 1199, 1205 (11th Cir. 2019) (quotation marks omitted).

A. October 22 Use of Force

Construed in the light most favorable to Orange, the evidence does not support a reasonable inference that the defendants applied force on October 22, 2019, "maliciously and sadistically to cause harm," rather than "in a good-faith effort to maintain or restore discipline." *Wilkins*, 559 U.S. at 37.

The central dispute regarding the events on October 22 concerns the need for force. The officers used force while attempting to relocate Orange to a new cell. Enforcing compliance with prison housing assignments generally provides a "valid penological reason [that] supports the use of [OC spray]." *Sconiers*, 946 F.3d at 1265; *see Danley*, 540 F.3d at 1307 ("readily conclud[ing]" that an "initial use of pepper spray following [an inmate's] second failure to obey

[an officer's] order to return to the cell" was not a constitutional violation).

But Orange claims that no penological purpose was served by using OC spray against him because it was obvious that he could not physically comply with the orders to ascend the stairs or let go of the railing. *Cf. Sconiers*, 946 F.3d at 1267–68 (recognizing a viable excessive force claim where the evidence supported a finding that the official "had no legitimate penological purpose in demanding that Sconiers repeatedly sit and stand" or in punishing him Sconiers for questioning those orders).

Here, a reasonable jury could conclude that Orange suffered from knee injuries that made it physically impossible for him to ascend the stairs as ordered. The evidence reflects that Orange suffers from patellar tendon knee injuries that limited his mobility. He repeatedly described his injuries to the officers and showed them his right knee, where he had a surgical scar and the kneecap was several inches up his thigh. And he told the officers that, as a result of his injuries, he had a "bottom bunk bottom tier profile." Plus, notes from a medical examination in April 2020, after the events of this case, reflect that Orange was "unable to step up or over elevated objects" and unable to actively bend his knee without falling.

Nevertheless, the evidence does not support a reasonable inference that the defendants ordered Orange to ascend the stairs despite knowing that he could not physically comply, such that an intent to punish could be inferred. *See Fennell*, 559 F.3d at 1217–18 (stating that "we examine the facts as reasonably perceived by

[defendants] on the basis of the facts known to [them] at the time"). Sergeant Roberts testified that, before assigning Orange to a cell on the upper tier, he called medical and "was informed that Mr. Orange did have a bottom bunk assignment, but did not have a bottom tier assignment." The officers were not medical professionals, so it made sense for them to defer to medical staff with respect to any housing limitations due to Orange's knee injuries, even if the information they received was erroneous or in conflict with Orange's statements.

Thus, we cannot say the evidence supports a finding that the officers' orders for Orange to ascend the stairs lacked a legitimate penological purpose, even if the endeavor the officers turned out to be wrong in retrospect in believing that Orange could navigate stairs. *See Sears*, 922 F.3d at 1205 ("[W]e must . . . 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."). In other words, when Orange was unable to climb the stairs and refused to do so, and then grabbed and held the railing, we can't say that the officers were unreasonable, based on their mistaken knowledge, in understanding Orange to have been resisting orders. And based on that misunderstanding, a reasonable officer would have thought he was permitted to use force to maintain or restore discipline. *See Sconiers*, 946 F.3d at 1265; *Sears*, 922 F.3d at 1205; *Danley*, 540 F.3d at 1307. Likewise, after Orange fell to the ground, the video shows him engaging in movements that reasonable officers could have construed as resisting the officers'

efforts to subdue him facedown on the ground, so the officers were permitted to respond with some level of force. *See id.*

The record does not support a finding that the officers maliciously and sadistically engaged in force disproportionate to what our jurisprudence has recognized as the need to enforce compliance with their directives. Though we certainly don't condone calling a detainee "bitch," on this record, we can't say that indicates malicious or sadistic intent.

The record shows that the officers used short bursts of pepper spray after giving several verbal orders and using forceful touching. *See Danley*, 540 F.3d 1307 ("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."). Soon after the use of force, Orange was taken to a nurse and then permitted to shower and decontaminate, which suggests an effort to temper the severity of their response. *See id.* at 1308–09 (reasoning that the denial of effective decontamination after using pepper spray can support an excessive force claim). It also does not appear that Orange, despite falling to the ground, suffered any injuries beyond the temporary (though surely uncomfortable) effects of chemical agents. And while a detainee need not experience long-term injuries to establish a claim of excessive force, the temporary and confined nature of the injuries here are an indication that the officers, who not unreasonably believed themselves to be in a position to use force, used force in a focused and limited way to accomplish their penological objective.

While Orange complains of the restraint chair and spit hood, these were brief measures plausibly supported by the facts as the officers understood them at the time. Orange admits he was spitting because of the presence of OC spray in his mouth, and there is no evidence that the officers used or adjusted the spit hood with the intent to impair his breathing. Plus, using a wheeled chair was arguably safer and faster to transport Orange, an inmate with mobility issues under the active effects of chemical spray, than having him walk on his own, and the temporary restraints during transport to the nurse were plausibly supported by Orange's perceived prior noncompliance. Even if the officers could have used different tactics to better effect, the evidence does not support a reasonable inference that the officers applied force "maliciously and sadistically to cause harm," rather than "in a good-faith effort to maintain or restore discipline." *Wilkins*, 559 U.S. at 37.

For these reasons, the district court properly granted summary judgment on Orange's claim that the defendants used excessive force against him on October 22, 2019.

B. October 27 Use of Force

Regarding the second incident on October 27, 2019, Orange has not shown that the district court erred by granting summary judgment. Undisputed evidence shows that jail officer Kirkland used OC spray against Orange in his cell after Orange refused and questioned Kirkland's order to stop talking. Although Orange was confined in his cell and posed no danger to others, he does not meaningfully dispute that Kirkland could have viewed his conduct

as disruptive. Rather, he admits that he was talking to another inmate through the vent shortly before Kirkland's order, and that he and Kirkland had multiple disagreements earlier in the evening, which resulted in a security curtain being placed on his cell. So the officer reasonably could have believed that some level of force was justified to "preserve discipline and security." *Sears*, 922 F.3d at 1205. And we have recognized that "[p]epper spray is an accepted non-lethal means of controlling unruly inmates." *Danley*, 540 F.3d at 1307.

The other factors do not support "a reliable inference of wantonness in the infliction of pain." *Whitley*, 475 U.S. at 322. After the use of force, Kirkland attempted to remove Orange from the cell and then, when Orange refused to be handcuffed by Kirkland, called a supervisor, who arrived within five minutes of the initial use of force.[2] Orange was then taken for a medical evaluation, where his eyes were washed with water, before he was taken back to the dorm, where he was permitted to decontaminate. Orange also does not allege any injuries from this incident apart from the temporary effects of chemical spray. Accordingly, Orange has

[2] We agree with the district court that the video plainly contradicts Orange's assertion that the spraying itself lasted five minutes, and so that portion of his testimony need not be credited. *See Pourmoghani-Esfahani v. Gee*, 625 F.3d 1313, 1315 (11th Cir. 2010) ("Where the video obviously contradicts Plaintiff's version of the facts, we accept the video's depiction instead of Plaintiff's account."). Even assuming the spraying was more extensive than the three, one-second bursts described in Kirkland's incident report, the timeline depicted in the video does not support a reasonable inference that the length of the spraying was wanton or malicious.

not shown that the spraying was done without penological justification or was so disproportionate to the need for force that it demonstrates "wantonness with respect to the unjustified infliction of harm as is tantamount to a knowing willingness that it occur." *Skrtich*, 280 F.3d at 1300–01.

V. Conclusion

For these reasons, the district court properly granted summary judgment on Orange's claims of excessive force.

AFFIRMED.