NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted November 28, 2023*
Decided December 14, 2023

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-1562

DESHAWN D. JOHNSON, *Plaintiff-Appellant*,	Appeal from the United States District Court for the Eastern District of Wisconsin.
v.	No. 21-CV-176
JOHNNA STANONIK, *Defendant-Appellee*.	William E. Duffin, *Magistrate Judge*.

O R D E R

DeShawn Johnson, a Wisconsin prisoner, sued a correctional officer, Johnna Stanonik, under 42 U.S.C. § 1983 for allegedly violating his Eighth Amendment rights by refusing to move him from his cell when he reported that his bunk was missing a

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

screw. He brought a state-law negligence claim based on the same facts. The district court entered summary judgment for Stanonik, and Johnson appeals. Because Johnson did not support his claims that Stanonik knew there was a serious risk to his safety and deliberately disregarded it, we affirm.

We draw these undisputed facts from the record developed on the parties' cross-motions for summary judgment. In Johnson's cell at Waupun Correctional Institution, the metal bed frame was bolted to a hinged metal beam along the wall on one side and could be folded up against the wall. A bolt fell out of Johnson's bed frame on May 8, 2020. On May 12, Johnson gave the bolt to a correctional officer, Mykayla Wade, who then gave it to Stanonik, the sergeant on duty. Stanonik put the bolt aside and told her supervisor about the need for a repair. Wade placed a written work order to repair the bunk, dated May 12. That day Stanonik received a written request for information from Johnson and responded that the bolt was in the "sergeant's cage" and that a work order had been placed. Based on her knowledge of how the bedframes are supported, she did not think that the single missing bolt presented a serious risk.

Early the next morning (May 13), Johnson stopped a passing correctional officer; he told her that his bunk had "collapsed," showed her his injuries, including a bruised forehead, and requested medical attention. A second work order was placed, and later that day, a maintenance worker fixed the bunk. The worker, William Homan, observed that the bunk was still anchored to the wall in three places and had not come off the wall or fallen to the floor. According to Homan, a missing corner bolt where the bedframe meets the wall could cause the bedframe to sag in that corner.

Some facts remain in dispute. First, Johnson says he submitted two informational requests to Stanonik on May 12: the one she answered by citing the work order, and one request to move cells, to which she simply responded, "NO!" Stanonik attests that she never responded to an oral or written request to change cells and that her signature is forged on the document Johnson produced in discovery.[1] Second, Johnson maintains in

[1] Stanonik's affidavit came after her answer, in which she admitted responding to a request to move cells. Her lawyers admit that this was their mistake. Stanonik's affidavit that she did not respond to the request Johnson produced, and that the signature is forged on it, was the basis of a motion for sanctions against Johnson. Johnson also filed a motion for sanctions against Stanonik because she did not timely produce photos of a typical bunk when asked for them in discovery. The court denied both motions for sanctions, and neither party challenges these rulings on appeal.

his verified complaint that he was treated for a concussion and bruising caused by a bunk "collapse"; he supports this not with medical records but with responses to his health services requests from prison medical staff, referring to a concussion and hematoma. And finally, Johnson tries to dispute that a work order was submitted on May 12 and believes that there was only one work order, submitted on May 13 after the "collapse." He points to a complaint examiner's response to a post-incident grievance; it quotes Homan as saying he worked on the bed "on 5/13/20 the same day the work order was written." However, he produces no evidence to show that this was the only work order relating to his bed. Stanonik maintains that work orders were placed on May 12 and 13 and has produced Homan's affidavit stating that his department received a work order on May 12 and that he did the work on May 13. She also submitted a physical copy of Wade's work order dated May 12 and digital receipts for two service requests about Johnson's cell, one on May 12 and one on May 13.

The magistrate judge, presiding by the parties' consent, *see* 28 U.S.C. § 636(c), granted Stanonik's motion for summary judgment and denied Johnson's, concluding that the undisputed facts showed Stanonik took reasonable remedial action immediately upon learning of the broken bed. Johnson therefore could not establish deliberate indifference on Stanonik's part. The court relinquished supplemental jurisdiction over the state-law negligence claim and entered final judgment. Johnson timely moved for reconsideration. FED. R. CIV. P. 59(e). The court denied relief, concluding that Johnson failed to demonstrate any manifest error of law.

We review the summary judgment decisions de novo, construing the evidence and drawing reasonable inferences in Johnson's favor. *Stockton v. Milwaukee County*, 44 F.4th 605, 614 (7th Cir. 2022). For his claim to survive summary judgment, Johnson needed sufficient evidence from which a reasonable jury could infer that (1) the condition of his bunk objectively posed "an excessive risk to…health and safety" and (2) that Stanonik knew of and disregarded this excessive risk to Johnson. *See Thomas v. Blackard*, 2 F.4th 716, 719–20 (7th Cir. 2021).

We need not decide whether the missing bolt constituted a sufficiently serious condition. Even if it were, Johnson has provided no evidence to show that Stanonik was subjectively aware of, and disregarded, the risk. *Id.* at 720. Stanonik attested that she was told that one bolt had come out of Johnson's bunk and, because there were three other bolts holding it in place, she did not consider it a serious safety risk. In response, Johnson simply argues that it was obvious that a missing bolt would make the bunk unstable. Johnson has not submitted any evidence, however, to refute Stanonik's

assertion. The Eighth Amendment requires that the officer being sued have actually inferred that the risk was present, even if conditions supporting that inference were obvious. *Farmer v. Brennan*, 511 U.S. 837, 844 (1994). Because Johnson failed to refute Stanonik's assertion that she did not infer an excessive safety risk, Johnson's claim fails.

Further, Stanonik's response to the condition could not lead a reasonable jury to conclude that she displayed deliberate indifference. She notified her supervisor and had Wade place a work order the same day she learned about the missing bolt. Johnson contends that a work order was placed only after his bunk "collapsed" on May 13, relying on Homan's quoted statement in the complaint examiner's response to his grievance. Johnson may dispute this point in his affidavit, but otherwise has not refuted Stanonik's evidence that a work order was also placed on the morning of May 12 – her and Homan's affidavits, Wade's hard copy, and the digital receipt. A jury could not find otherwise based on Johnson's interpretation of the grievance response (even assuming its admissibility).

Thus, Stanonik took reasonable corrective action on May 12 despite failing to avert the harm. *Rasho v. Jeffreys*, 22 F.4th 703, 711 (7th Cir. 2022). Johnson wanted her to do more, but fixing the bunk and moving Johnson to another cell were both outside Stanonik's duties and authority. *See Hunter v. Mueske*, 73 F.4th 561, 566 (7th Cir. 2023). She ensured that a work order was placed and notified her supervisor, who could arrange cell moves. Therefore, on this record, no reasonable jury could find that Stanonik acted with deliberate indifference. *See Thomas*, 2 F.4th at 721. This is true despite any fact dispute about how many information requests Stanonik responded to or whether Johnson had a concussion: they are not material to whether Stanonik acted with the culpable state of mind required for deliberate indifference.

Next, Johnson challenges the court's denial of his motion for reconsideration, a decision we review for abuse of discretion. *Doe v. Village of Arlington Heights*, 782 F.3d 911, 914 (7th Cir. 2015). He argues that the court cited facts outside those presented in the parties' summary judgment briefs, specifically that Johnson slept in the bunk for four days before requesting that it be fixed. But this was appropriate. Among the evidence Johnson submitted was a copy of his verified complaint, in which he states that the bolt came out on May 8, and he also directed the court to the complaint in his brief supporting his motion for summary judgment. Courts may consider any evidence in the record when deciding summary judgment motions, FED. R. CIV. P. 56(c)(3), and so the court did not abuse its discretion in doing just that.

Finally, we recognize Johnson's assertions that he had difficulty preparing his reply brief because he lacked access to certain materials while he was transferred to a different facility and placed in segregation for three weeks, and that he suspects the Department of Corrections of erasing materials from a digital storage drive. He asks us to recruit counsel for him to pursue this matter. But we have access to the full record, and so Johnson's lack of access did not prejudice him. Anyway, we consider only arguments raised in the appellant's opening brief. *Laborers' Pension Fund v. W.R. Weis Co., Inc.*, 879 F.3d 760, 768 (7th Cir. 2018). The arguments Johnson raises do not affect our conclusion that the record contains insufficient evidence of Stanonik's culpable state of mind, and so we see no need to recruit counsel or take other action.

AFFIRMED