

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
EASTERN DIVISION

ANTWAN TATUM

PLAINTIFF

v.

No. 2:13-cv-151-DPM-BD

BRYANT PHILLIPS, Officer, EARU, ADC

DEFENDANT

ORDER

1. The Court withdraws the reference.

2. Before the Court can rule on qualified immunity, a jury must decide

(1) whether Phillips knew that Mitchell posed a substantial risk to Tatum, and if so, (2) whether Phillips deliberately disregarded that risk when he opened Tatum's cell for Mitchell. *Nelson v. Shuffman*, 603 F.3d 439, 446 (8th Cir. 2010).

The record still doesn't answer these questions as a matter of law. *Compare* No 170-6, with No 173-2. The Court continues to agree with Magistrate Judge Ray's analysis earlier in the case: one reasonable inference from the internal investigation circumstances is that Phillips knew that there was a real risk Mitchell would end up harming Tatum. No 156. A jury must evaluate Phillips's and Tatum's credibility and draw inferences to discern the truth. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Phillips's second motion for summary judgment, No 170, is therefore denied.

3. This case is first out for trial on 11 October 2016. The Court eliminates responding trial briefs and adds a request for stipulations on background facts. Please submit any stipulation with proposed jury instructions. The Court will hold a one-hour pretrial on 20 September 2016 at 9:00 a.m.

So Ordered.

D.P. Marshall Jr.  
D.P. Marshall Jr.  
United State District Judge

30 August 2016