

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANTHONY MARVELL SEMIEN,
Plaintiff,
v.
K. PEEPLES,
Defendant.

No. C 07-02803 CW
ORDER GRANTING
DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT
(Docket no. 23)

_____/

Plaintiff Anthony Marvell Semien, a state prisoner incarcerated at Pelican State Bay Prison, brought this pro se action under Title 42 U.S.C. § 1983 against Correctional Officer K. Peeples. Plaintiff alleges that, on November 8, 2006, Defendant Peeples used excessive force in violation of his civil rights. Defendant moves for summary judgment on Plaintiff's claim. Plaintiff opposes the motion. Having considered all of the papers filed by the parties, the Court GRANTS the motion.

FACTUAL BACKGROUND

The following facts are undisputed, except as noted below. On November 8, 2006, Defendant, Officer Bachmann and Officer McGuirt arrived at Plaintiff's cell to escort him to the housing unit rotunda. (Peeples Decl. ¶¶ 3 and 4.) Defendant told Plaintiff that he was getting a new cellmate. (Semien Dep. at 19; Peeples

1 Decl. ¶ 3.) Defendant alleges that she then told Plaintiff to cuff
2 up and that he refused. (Peeples Decl. ¶ 4.) In his opposition,
3 Plaintiff states that Defendant never ordered him to cuff-up, but,
4 in his complaint, admits that she did order him to cuff-up.
5 (Opposition at 10, Complaint at 3.) It is undisputed that Officer
6 McGuirt told Plaintiff to cuff up. (Semien Dep. at 20; Peeples
7 Decl. ¶ 4.) Plaintiff refused and stated that he wanted to first
8 speak to his new cellmate. (Id.)

9 After Plaintiff disobeyed the order to cuff up and exit his
10 cell, the officers unlocked his cell door. (Semien Dep. at 20.)
11 Plaintiff demanded to speak to a superior officer immediately.
12 (Id.) Plaintiff claims that he then cuffed up at the cuff board
13 and backed out of his cell. (Id.) Plaintiff was then ordered to
14 side step to a one-foot wall divider between cells. (McGuirt Decl.
15 ¶ 5.)

16 At the wall, Plaintiff turned his head towards Officer McGuirt
17 and demanded to speak to a sergeant. (Semien Dep. at 21; Peeples
18 Decl. ¶ 4.) Defendant claims Plaintiff was also swearing.
19 (Peeples Decl. ¶ 4.) Plaintiff denies he was swearing and states
20 that he just asked to speak to a sergeant. (Semien Dep. at 20.)
21 Defendant had one hand on Plaintiff's back and one hand on his
22 shoulder. (Id. at 21.) Plaintiff continued to turn his head
23 towards Officer McGuirt demanding to speak to a sergeant. (Semien
24 Dep. at 21; Peeples Decl. ¶ 5.)

25 Officer McGuirt ordered Plaintiff to face the wall. (Semien
26 Dep. at 21; McGuirt Decl. ¶ 7.) Defendant claims that, at the same
27 time as this order was given, she pressed on Plaintiff's back to
28 maneuver him against the wall because officers are trained to

1 anticipate that agitated inmates might spit at or head-butt an
2 officer when they quickly turn their heads. (Peeples Decl. ¶ 5.)
3 Plaintiff stated that Defendant pushed his chest into the wall by
4 pushing his back, which caused him to hit his chin and face against
5 the wall. (Semien Dep. at 21.) Plaintiff admitted that he was
6 standing so close to the wall before being pressed closer by
7 Defendant that he could have licked it with his tongue. (Id. at
8 21-22.)

9 Plaintiff alleges he suffered a cut lip. (Semien Dep. at 21.)
10 Plaintiff testified that he did not bleed immediately after the
11 event, but noticed blood in his mouth later, and that there was
12 pain in his tooth for about a week after the incident, but it did
13 not limit his ability to do anything. (Id. at 29-30.) According
14 to Plaintiff, a few days after the incident, a Medical Technician
15 Assistant (MTA) examined him and gave him painkillers; Plaintiff
16 did not visit the MTA again. (Id. at 28-29.) There are no medical
17 reports of injuries relevant to this incident. (See Defendant's
18 Exhibit B and C attached to the Korman Decl.; Peeples Decl. ¶ 7.)

19 LEGAL STANDARD

20 Summary judgment is properly granted when no genuine and
21 disputed issues of material fact remain, and when, viewing the
22 evidence most favorably to the non-moving party, the movant is
23 clearly entitled to prevail as a matter of law. Fed. R. Civ. P.
24 56; Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986);
25 Eisenberg v. Ins. Co. of N. Am., 815 F.2d 1285, 1288-89 (9th Cir.
26 1987).

27 The moving party bears the burden of showing that there is no
28 material factual dispute. Therefore, the court must regard as true

1 the opposing party's evidence, if it is supported by affidavits or
2 other evidentiary material. Celotex, 477 U.S. at 324; Eisenberg,
3 815 F.2d at 1289. The court must draw all reasonable inferences in
4 favor of the party against whom summary judgment is sought.
5 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,
6 587 (1986); Intel Corp. v. Hartford Accident & Indem. Co., 952 F.2d
7 1551, 1558 (9th Cir. 1991).

8 Material facts which would preclude entry of summary judgment
9 are those which, under applicable substantive law, may affect the
10 outcome of the case. The substantive law will identify which facts
11 are material. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248
12 (1986). Where the moving party does not bear the burden of proof
13 on an issue at trial, the moving party may discharge its burden of
14 showing that no genuine issue of material fact remains by
15 demonstrating that "there is an absence of evidence to support the
16 nonmoving party's case." Celotex, 477 U.S. at 325. The burden
17 then shifts to the opposing party to produce "specific evidence,
18 through affidavits or admissible discovery material, to show that
19 the dispute exists." Bhan v. NME Hosps., Inc., 929 F.2d 1404, 1409
20 (9th Cir. 1991), cert. denied, 502 U.S. 994 (1991). A complete
21 failure of proof concerning an essential element of the non-moving
22 party's case necessarily renders all other facts immaterial.
23 Celotex, 477 U.S. at 323.

24 DISCUSSION

25 Defendant moves for summary judgment on the grounds that there
26 was no constitutional violation because she did not use excessive
27 force and, in the alternative, that she is entitled to qualified
28 immunity.

1 I. Excessive Force

2 In order to state a claim for the use of excessive force in
3 violation of the Eighth Amendment, Plaintiff must allege facts
4 that, if proven, would establish that prison officials applied
5 force "maliciously and sadistically to cause harm," rather than in
6 a good-faith effort to maintain or restore discipline. Hudson v.
7 McMillian, 503 U.S. 1, 6-7 (1992). The extent of injury suffered
8 by an inmate is one of the factors to be considered in determining
9 whether the use of force is wanton and unnecessary. Id. Not every
10 malevolent touch by a prison guard gives rise to a federal cause of
11 action; the Eighth Amendment's prohibition of cruel and unusual
12 punishment necessarily excludes from constitutional recognition de
13 minimis uses of physical force. Id. at 9-10. Guards may use force
14 only in proportion to the need in each situation. Spain v.
15 Procunier, 600 F.2d 189, 195 (9th Cir. 1979).

16 In determining whether the use of force was for the purpose of
17 maintaining or restoring discipline or, rather, for the malicious
18 and sadistic purpose of causing harm, a court may evaluate the need
19 for application of force, the relationship between that need and
20 the amount of force used, the extent of any injury inflicted, the
21 threat reasonably perceived by the responsible officials, and any
22 efforts made to temper the severity of a forceful response.
23 Hudson, 503 U.S. at 7.

24 Plaintiff alleges that Defendant used excessive force by
25 pushing him, without provocation, into the wall and thereby
26 injuring his lip. However, Plaintiff admits that he refused
27 Officer McGuirt's direct order to cuff up. (Semien Dep. at 20;
28 McGuirt Decl. ¶ 6.) He also admits that, when he finally backed

1 out of his cell and was handcuffed, he turned his head towards
2 Officer McGuirt and demanded to speak to a sergeant. (Semien Dep.
3 at 20 and 21; McGuirt Decl. ¶ 6.) Defendant then pressed Plaintiff
4 against the wall due to her concern for officer safety because she
5 feared Plaintiff might spit at or head-butt an officer when he
6 quickly turned his head. (Peeples Decl. ¶ 5.) Plaintiff testified
7 that he was standing so close to the wall before being pressed
8 closer by Defendant that he could have licked it with his tongue.
9 (Semien Dep. at 21-22.)

10 Although Plaintiff and Defendant disagree on whether Plaintiff
11 was swearing when exiting his cell and whether he appeared
12 agitated, Plaintiff does not dispute that he disobeyed a direct
13 order to cuff up and exit his cell nor that he turned his head
14 towards Officer McGuirt once outside his cell. Under these
15 undisputed circumstances, Defendant reasonably could have feared
16 that Plaintiff would spit at or head-butt an officer and that it
17 was proper to use minimal force to prevent him from doing so. She
18 pressed his chest into the wall from a distance of a few inches to
19 prevent him from turning his head.

20 Plaintiff states that he suffered a cut lip after being
21 pressed by Defendant against the wall, but that he did not bleed
22 immediately. (Semien Dep. at 29-30.) He also states that,
23 although there was pain in his tooth for about a week, it did not
24 limit his ability to engage in any activities. (Id.) There are no
25 medical reports of injuries relevant to this incident. (See
26 Defendant's Exhibit B and C attached to the Korman Decl.; Peeples
27 Decl. ¶ 7.) It appears that any injury inflicted was minor.

28 Plaintiff fails to provide evidence that Defendant applied

1 force in a malicious or sadistic manner. Accordingly, Defendant is
2 entitled to summary judgment as a matter of law.

3 II. Qualified Immunity

4 Defendant also asserts that she is entitled to summary
5 judgment based on qualified immunity.

6 Under Saucier v. Katz, 533 U.S. 194, 201 (2001), a court must
7 undertake a two-step analysis when a defendant asserts qualified
8 immunity in a motion for summary judgment. A court first faces
9 "this threshold question: Taken in the light most favorable to the
10 party asserting the injury, do the facts alleged show the officer's
11 conduct violated a constitutional right?" Id. at 201. If the
12 court determines that a constitutional right has been violated, it
13 then moves to the second step and asks "whether the right was
14 clearly established" such that "it would be clear to a reasonable
15 officer that his conduct was unlawful in the situation he
16 confronted." Id. at 201-02. In the excessive force context, the
17 court makes an inquiry first into the objective reasonableness of
18 the officer's belief in the necessity of his actions and next into
19 the objective reasonableness of the officer's belief in the
20 legality of his actions. Wilkins v. City of Oakland, 350 F.3d 949,
21 954-55 (9th Cir. 2003). The qualified immunity analysis does not
22 use the "20/20 vision of hindsight," but rather defers to the
23 judgment of reasonable officers at the time of the occurrence.
24 Graham v. Connor, 490 U.S. 386, 396 (1989).

25 Construing the evidence in Plaintiff's favor, the Court has
26 found that Defendant's action did not amount to cruel and unusual
27 punishment. Even if Defendant had violated Plaintiff's Eighth
28 Amendment rights, though, she is entitled to qualified immunity

1 because she has produced sufficient evidence to show that she could
2 have believed that her actions were reasonable under the
3 circumstances.

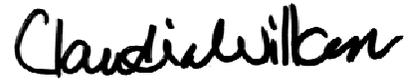
4 CONCLUSION

5 For the foregoing reasons, the Court GRANTS Defendant's motion
6 for summary judgment. The Court shall enter judgment and close the
7 file. Each party shall bear his or her own costs.

8 IT IS SO ORDERED.

9

10 Dated: 12/12/08



11 CLAUDIA WILKEN
United States District Judge

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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 ANTHONY MARVELL SEMIEN,

5 Plaintiff,

Case Number: CV07-02803 CW

CERTIFICATE OF SERVICE

6 v.

7 PEEPLES et al,

8 Defendant.

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court,
10 Northern District of California.

11 That on December 12, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
14 in the Clerk's office.

15 Anthony Marvell Semien K-76979
16 Pelican Bay State Prison
17 P.O. Box 7500
18 Crescent City, CA 95531-7500

19 Dated: December 12, 2008

20 Richard W. Wieking, Clerk
21 By: Sheilah Cahill, Deputy Clerk
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