

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
DUBLIN DIVISION

FILED
U.S. DISTRICT COURT
AUGUSTA DIV.
2018 JAN 11 PM 3:02
CLERK [Signature]
SO. DIST. OF GA.

RASHAAD DANIEL CARSON,)
)
 Plaintiff,)
)
 v.) CV 316-092
)
 FELECIA SHARPE,)
)
 Defendant.)

ORDER

After a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge’s Report and Recommendation, to which objections have been filed (doc. no. 50). The Magistrate Judge recommended granting summary judgment to Defendant Sharpe on Plaintiff’s excessive force claim. (Doc. no. 48.) Plaintiff raises multiple objections, all of which the Court overrules, but two merit further discussion.

First, Plaintiff claims that had the Court been provided a video of the events in question, “the very basis of this lawsuit could be proven in favor of the Plaintiff.” (Doc. no. 50, p. 1.) Plaintiff argues the video would show he had his hands on the wall and had stopped cursing at Defendant when she administered the one-second burst of OC spray. (*Id.* at 1-2.) However, the Magistrate Judge already considered these facts as part of the summary judgment record before him and correctly concluded Defendant did not use constitutionally excessive force against Plaintiff. (*See* doc. no. 48, pp. 4, 9-10.)

Plaintiff argues he was in a “surrendered state” with his hands on the wall, and points to the OC spray areas on his back shoulder and buttocks in support of his contention Defendant had no legitimate need to spray him. (Doc. no. 47, p. 3.) However, even if Plaintiff had his hands on the wall, a sudden turn of his face toward Defendant - given his previous altercation with a correctional officer regarding the meal tray, aggressive language toward Defendant, and larger size - could have been reasonably been interpreted as threatening and calling for the application of some force to maintain or restore discipline.

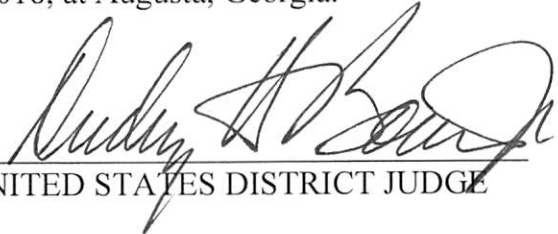
(Id. at 10.) The Magistrate Judge then went on to explain, “In light of Defendant’s reasonable perception of Plaintiff’s threatening behavior and Defendant’s need to quickly handle an increasingly dangerous situation, Defendant used a reasonable, minimal, amount of force to restore order as quickly as possible.” (Id. at 11.) Thus, Plaintiff’s objections concerning a video that is not part of the record form no basis for rejecting the Magistrate Judge’s recommendation.¹

Second, Plaintiff objects that a picture submitted by Defendant as an attachment to Exhibit C of the motion for summary judgment, Declaration of Pat Clark, does not accurately depict him immediately after the use of force at issue in this case. (Doc. no. 50, p. 2.) The objection has no relevance to the outcome of the motion, as the Magistrate Judge explained the quality of the picture was such that no discernable details about the person were evident. (Doc. no. 48, p. 5 n.2.) The Magistrate Judge did not rely on the picture in conducting his analysis, referencing instead only the substance of Ms. Clark’s written declaration. (Id. at 4-5, 10.)

¹In addition, the record does not reflect Plaintiff ever filed a proper motion to compel regarding a video, despite receiving specific instructions on how to do so on more than one occasion. (See doc. no. 9, p. 5; doc. no. 37.)

Accordingly, the Court **OVERRULES** all objections, **ADOPTS** the Report and Recommendation of the Magistrate Judge as its opinion, **GRANTS** Defendant's motion for summary judgment, (doc. no. 40), **DIRECTS** the Clerk to **ENTER** final judgment in favor of Defendant, and **CLOSES** this civil action.

SO ORDERED this 12th day of January, 2018, at Augusta, Georgia.


UNITED STATES DISTRICT JUDGE