IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANTHONY YOUNG,	:	
	:	
Plaintiff,	:	
	:	**CIVIL ACTION**
v.	:	
	:	
CORRECTIONAL OFFICER GRUBE, et al.,	:	**NO. 15-1058**
	:	
Defendants.	:	

MEMORANDUM

STENGEL, J. **July 25, 2017**

I. INTRODUCTION

Anthony Young claims that while incarcerated at Northampton County Jail, a correctional officer grabbed him by the throat and used a set of keys to punch him in the mouth. Young brings claims for excessive force, under 42 U.S.C. § 1983, against the correctional officer and a prison supervisor. The defendants filed a motion for summary judgment. I will grant the motion as to the prison supervisor but deny the motion as it pertains to the correctional officer.

II. BACKGROUND

On January 13, 2015, Anthony Young was incarcerated at Northampton County Jail. Early that morning, another inmate, Geffrey Desir, was moved to the unit Mr. Young was housed in. According to Mr. Young, Desir was causing a ruckus. Mr. Young yelled at Desir to quiet down because he was trying to sleep.

The rest of the day, Desir and Young argued with each other from their respective cells. At one point, Young claims Desir said, "when I come out, I am going to eff you up, you know." (Young Dep. 26:25–27:2). Young then overheard Desir ask defendant Gerald Grube, a correctional officer ("CO"), to let him out so he could "fuck [Young] up." (Id. at 27:15–17). CO Grube let Young and Desir out of their cells around the same time. (Id. at 27:17).

Mr. Young claims, once out of their cells, Desir came at him "in a threatening manner" so he hit Desir twice. (Id. at 27:17–24). After this happened, CO Grube punched Young in the mouth with the keys CO Grube uses to unlock the cells. (Id. at 29:20–30:3, 33:2–11). Young did not do anything threatening toward CO Grube. (Id. at 32:22). After CO Grube hit Young, he allegedly said: "You didn't know I could hit that hard for an old guy, did you[?]" (Id. at 32:7–8). This incident was captured on video surveillance.

After being hit, Young's mouth was bleeding so he went to the medical unit. (Id. at 34:21–24). Young's nose was also bleeding. (Doc. No. 3 ¶ III). Since this fight, Young has had to visit the dentist three times. (Id.). He had cuts on his mouth that healed weeks later. Since being hit by CO Grube, he had excruciating pain in one of his teeth, which eventually had to be removed. (Young Dep. 36:12–16). He has since told a psychologist at the prison that he wakes up scared in the middle of the night to the sound of keys and that he is afraid he will get attacked again by a correctional officer. (Id. at 34:18–20).

In addition to CO Grube, Mr. Young sued Ryan Ziegler, a lieutenant at the Northampton County Jail. According to Mr. Young, Lieutenant Ziegler "didn't do anything. He didn't attack me or nothing." (Id. at 35:2–3). The only reason Mr. Young

named Lieutenant Ziegler in the lawsuit is "because he was the lieutenant who handled the situation," meaning, "he was the supervisor on duty" at the time the fight occurred. (Id. at 35:5–8). However, Mr. Young was adamant in his deposition testimony that Lieutenant Ziegler "wasn't involved at all" in this incident. (Id. at 35:11).

III. LEGAL STANDARD

Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A factual dispute is "material" only if it might affect the outcome of the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). For an issue to be "genuine," a reasonable fact-finder must be able to return a verdict in favor of the non-moving party. Id.

A party seeking summary judgment initially bears responsibility for informing the court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). A party asserting that a fact cannot be or is genuinely disputed must support the assertion by citing relevant portions of the record, including depositions, documents, affidavits, or declarations, or showing that the materials cited do not establish the absence or presence of a genuine dispute, or showing that an adverse party cannot produce admissible evidence to support the fact. Fed. R. Civ. P. 56(c). Summary judgment is therefore appropriate when the non-moving party fails to rebut the moving party's argument that there is no genuine issue of fact by pointing to evidence

that is "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322.

Under Rule 56 of the Federal Rules of Civil Procedure, the court must draw "all justifiable inferences" in favor of the non-moving party. Anderson, 477 U.S. at 255. The Court must decide "not whether . . . the evidence unmistakably favors one side or the other but whether a fair-minded jury could return a verdict for the plaintiff on the evidence presented." Id. at 252.

IV. DISCUSSION

Defendants argue summary judgment is proper for two reasons. First, they claim Young's excessive force claims fail because there is no genuine dispute of material fact that excessive force was not used. Second, they claim they are entitled to qualified immunity.

A. Excessive Force

Young's excessive force claim against CO Grube is sufficient to withstand summary judgment. However, his claim against Lieutenant Ziegler is not.

As a pretrial detainee, Young's claims are governed by the Due Process Clause of the Fourteenth Amendment. Kingsley v. Hendrickson, 135 S. Ct. 2466, 2473 (2015). The Due Process Clause protects pretrial detainees from the use of excessive force that amounts to punishment. Id. (citing Graham v. Connor, 490 U.S. 386, 395 n.10 (1989)). To make out an excessive force claim, the plaintiff must ultimately prove that the force used against him was "objectively unreasonable." Id. (quoting Bell v. Wolfish, 441 U.S. 520, 561 (1979)). The following factors are considered in making this determination: "[1]

the relationship between the need for the use of force and the amount of force used; [2] the extent of the plaintiff's injury; [3] any effort made by the officer to temper or to limit the amount of force; [4] the severity of the security problem at issue; [5] the threat reasonably perceived by the officer; and [6] whether the plaintiff was actively resisting." Id. (citing Graham, 490 U.S. at 396).

In consideration of the above factors, there is a genuine dispute of material fact as to whether CO Grube used excessive force against Mr. Young. Mr. Young testified that he never made any gestures or threats toward CO Grube. In response to Mr. Young fighting with another inmate, CO Grube allegedly punched Young in the mouth with a set of keys. There is thus a question of fact as to "the need for the use of force and the amount of force used." Kingsley, 135 S. Ct. at 2473. In the same vein, there is a genuine factual dispute as to CO Grube's efforts "to temper or limit the amount of force." Id. Young is entitled to argue to a jury that CO Grube could have done many things—other than punch him in the mouth with a set of keys—to break up the fight between himself and inmate Desir.

Finally, there appears to be no evidence Young was resisting CO Grube or that CO Grube reasonably perceived a threat to his own safety. Rather, the evidence simply shows that Young got into a fight with another inmate. Defendants argue that the jail's internal investigation, which concluded there was no excessive force used, should warrant summary judgment. They also argue that "the incident was caused by Plaintiff, who chose to engage in the underlying physical altercation with another inmate which necessitated the need for correctional staff to respond, and which ultimately resulted in

Young's alleged injuries." (Doc. No. 21, Mot. Summ. J. at 6–7). This argument oversimplifies the excessive force analysis as outlined in Kingsley and its progeny. It does not matter, for purposes of his excessive force claim, that the fight with Desir "was caused by [Young]." What matters is whether the force CO Grube used to respond to this fight—punching Young in the mouth with a set of metal keys—was reasonable. The fact that the jail's internal investigation concluded CO Grube did not use excessive force does not carry the day for defendants. It is merely one piece of evidence the jury may consider in its determination of the above disputed facts. All told, Young's excessive force claim is sufficient to withstand summary judgment.

Mr. Young's excessive force claim against Lieutenant Ziegler is insufficient to withstand summary judgment.

A plaintiff bringing a claim under § 1983 must establish a defendant's "personal involvement" in the alleged constitutional violation. Chavarriaga v. New Jersey Dep't Corrs., 806 F.3d 210, 222 (3d Cir. 2015). Personal liability under § 1983, unlike an ordinary negligence claim, cannot be predicated upon a theory of *respondeat superior*. E.g., Rizzo v. Goode, 423 U.S. 362, 368 (1976). Personal involvement can be shown by either "personal direction" or "actual knowledge and acquiescence" on the part of the defendant. Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1998).

In this case, the plaintiff has admitted Lieutenant Ziegler had no personal involvement. According to the plaintiff himself, Lieutenant Ziegler "wasn't involved at all" in this incident. (Young Dep. at 35:11). Lieutenant Ziegler "didn't do anything. He didn't attack me or nothing." (Id. at 35:2–3). The only reason Mr. Young named

Lieutenant Ziegler in the lawsuit is "because he was the lieutenant who handled the situation," meaning, "he was the supervisor on duty" at the time the fight occurred. (Id. at 35:5–8). Based on the plaintiff's own testimony, and the lack of any other evidence implicating Lieutenant Ziegler, there is no genuine dispute that Lieutenant Ziegler has no liability in this case. Based on all this, I will grant summary judgment as to plaintiff's claim against Lieutenant Ziegler.

B. Qualified Immunity

The defendants argue alternatively that the claims must be dismissed because they are entitled to qualified immunity. I disagree.

Qualified immunity shields certain government officials, who perform discretionary functions, from liability under § 1983 if "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). The burden to establish qualified immunity is on the defendant. Beers-Capitol v. Whetzel, 256 F.3d 120, 142 n.15 (3d Cir. 2001).

A ruling on qualified immunity is a two-step process. Saucier v. Katz, 533 U.S. 194, 200–01 (2001). First, I must consider whether the facts alleged, taken in a light most favorable to the plaintiff, show that the official's conduct violated a clearly established constitutional right. Id. at 201. If the plaintiff is successful at this first juncture, I then must determine whether the "right" the plaintiff relies on was "clearly established." Id. The Supreme Court has since pronounced that the two-step process announced in Saucier v. Katz, 533 U.S. 194 (2001) should "no longer be regarded as mandatory." Pearson v.

Callahan, 555 U.S. 223, 236 (2009). Nonetheless, this two-step process may still reamin helpful to judges deciding the qualified immunity issue. Id.

The facts show Mr. Young is successful at the first step. Mr. Young alleges that he was punched in the face by a correctional officer, who used a set of metal keys to do so. Mr. Young alleges he was involved in an altercation with another prisoner—not the correctional officer. There was no threat to the correctional officer. These facts, taken in a light most favorable to the plaintiff, establish a violation of Mr. Young's right to be free from excessive force. Taking Mr. Young's version of events as true, which I must, the level of force used was not reasonable in light of the apparent lack of a threat to the correctional officer himself.

Mr. Young is also successful at the second step of the qualified immunity inquiry. The Supreme Court has held that, when a prison official is accused of excessive force, the key question is "whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." Hudsonv. McMillian, 503 U.S. 1, 7 (1992) (citing Whitley v. Albers, 475 U.S. 312 (1986)). Thus, it is clearly established that prisoners are protected from excessive force at the hands of prison officials any time the force was not used in a good-faith effort to maintain or restore discipline or when the force was used maliciously to cause harm. E.g., Ewing v. Cumberland Cty., 152 F. Supp. 3d 269, 295–96 (D.N.J. 2015) (citing Hudson, 503 U.S. at 7; Whitley, 475 U.S. at 321). Using a set of metal keys to beat an inmate without justification cannot be said to be a "good-faith" effort to maintain discipline. Of course, the defendants may argue at trial that this level of force was necessary. Yet at this stage of the litigation, it would be

improper to grant summary judgment on plaintiff's claim against CO Grube. Viewing the facts in a light most favorable to plaintiff, no reasonable officer would believe that punching an inmate in the mouth with a set of metal keys was necessary.

V. CONCLUSION

For all the above reasons, I will grant summary judgment on plaintiff's claim against Lieutenant Ziegler. I will deny summary judgment on plaintiff's claim against CO Grube.