

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS

GALVESTON DIVISION

|                         |   |                           |
|-------------------------|---|---------------------------|
| REGINALD DEON DAVIS     | § |                           |
|                         | § |                           |
| V.                      | § | CIVIL ACTION NO. G-13-287 |
|                         | § |                           |
| CITY OF GALVESTON,      | § |                           |
| ARCHIE CHAPMAN, JR.     | § |                           |
| and JOSE H. SANTOS, JR. | § |                           |

**OPINION AND ORDER**

Before the Court, with the consent of the Parties, is the “Motion to Dismiss and for Sanctions” of Defendants, City of Galveston, Archie Chapman, Jr. and Jose H. Santos, Jr.; the Motion seeks the dismissal of the excessive use of force claim asserted under the Fourteenth Amendment by Plaintiff, Reginald Deon Davis, and the imposition of sanctions for Davis’ alleged pleading violations.

In his Complaint, Davis alleges that he was the victim of unnecessary and excessive force at the hands of Galveston police officers Chapman, Santos and three other unidentified officers during his arrest on March 19, 2013, in Galveston, Texas. In Graham v. Connor, 490 U.S. 386, 395 (1989), the United States Supreme Court held that

*All* claims that law enforcement officers had used excessive force - deadly or not - in the course of an arrest, investigatory stop, or other “seizure” of a free citizen should be analyzed under the Fourth Amendment and its “reasonableness” standard, rather than under a “substantive due process” approach.

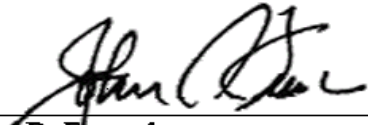
Since it is clear that any alleged use of excessive force occurred during Davis’ arrest and not during any subsequent pretrial detainment, his only remedy is under the Fourth Amendment.

Cf. Gutierrez v. City of San Antonio, 139 F.3d 441, 452 (5<sup>th</sup> Cir. 1998) No amount of discovery will support Davis' claim under the Fourteenth Amendment.

It is, therefore, **ORDERED** that the Defendants' Motion to Dismiss (Instrument no. 6) the Fourteenth Amendment Claim of Davis is **GRANTED** and that claim is **DISMISSED**.

The Court has previously "cured" Davis' pleading violations through redactions and the Defendants' Motion for Sanctions (Instrument no. 6) is, therefore, **DENIED as moot**.

**DONE** at Galveston, Texas, this 31st day of October, 2013.

  
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John R. Froeschner  
United States Magistrate Judge