IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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DERRICK HOWARD,

OPINION and ORDER

Plaintiff,

11-cv-629-bbc

v.

OFFICER HOOPER,

Defendant.

- -

In this civil action for monetary relief under 42 U.S.C. § 1983, plaintiff Derrick Howard, a prisoner at the Wisconsin Resource Center, is proceeding on a claim that defendant Officer Patrick Hooper used excessive force against him at the Columbia Correctional Institution. The case is before the court on defendant's motion for summary judgment. Dkt. #47. I conclude that defendant's motion must be granted because the undisputed facts show that defendant used force in a good faith effort to respond to a perceived security threat and not for the purpose of harming plaintiff.

From the parties' proposed findings of fact, I find the following facts to be material and undisputed.

UNDISPUTED FACTS

At all times relevant to this case, plaintiff Derrick Howard was incarcerated in the segregation unit at the Columbia Correctional Institution, located in Portage, Wisconsin.

Defendant Patrick Hooper was a correctional officer at the prison. The segregation unit is one of the highest level security units at the prison. Inmates in segregation are considered to be dangerous and unpredictable, and staff members are trained to take steps to control inmates as quickly as possible whenever there is a potential threat to themselves or the inmate. Correctional staff is trained to use a non-moveable surface such as a wall to stabilize inmates until they are brought under control.

On June 15, 2011, defendant was moving inmates to and from their cells in segregation to the shower area. When defendant was ready to move plaintiff from the showers back to his cell, defendant restrained plaintiff behind his back with double-locked wrist restraints. Defendant then opened the shower door and started to escort plaintiff down the range to his cell. The escort began without incident, until plaintiff and defendant passed cell #22, when there was a noise and disturbance. The cell was occupied with another inmate at the time. (The parties dispute what happened at cell #22. According to defendant, plaintiff suddenly pulled away from defendant and kicked the front of the door to cell #22. Defendant says that he perceived plaintiff's action as a threat toward the other inmate or to defendant. Plaintiff denies pulling away and kicking the door. He says that the prisoner inside cell #22 bumped his own door in an attempt to frighten plaintiff with its loud noise.) Immediately after the noise, defendant used compliance holds on plaintiff's wrists, turned plaintiff to his right side and pushed him against the wall. (Plaintiff says that defendant "slammed" his face into the wall and then "quickly slammed him to the ground." Defendant says that he turned plaintiff to the wall "in a controlled manner" and told him

to stop kicking. Defendant denies taking plaintiff to the ground). Soon after, defendant continued to escort plaintiff to his cell. Defendant escorted plaintiff back to his cell without further incident. Defendant did not see any injuries on plaintiff's face and plaintiff did not tell defendant he was injured. Once plaintiff was secure, defendant notified the unit sergeant of the incident and prepared an incident report.

Plaintiff asked for medical attention and was seen by a nurse. Plaintiff had pain, bruising and swelling above his left eye for approximately seven days.

OPINION

The Eighth Amendment prohibits the "unnecessary and wanton infliction of pain" on a prisoner. Forrest v. Prine, 620 F.3d 739, 744 (7th Cir. 2010) (quoting Whitley v. Albers, 475 U.S. 312, 319 (1986)). Only force applied "maliciously and sadistically for the very purpose of causing harm" falls under that standard. Hudson v. McMillian, 503 U.S. 1, 7 (1992) (quoting Whitley, 475 U.S. at 320-21). Force used in "a good-faith effort to maintain or restore discipline" does not rise to the level of being unnecessary, wanton or unconstitutional. Id. The factors relevant to an excessive force determination include why force was needed, how much force was used, the extent of the injury inflicted, whether defendant perceived a threat to the safety of staff and prisoners and whether efforts were made to temper the severity of the force. Whitley, 475 U.S. at 321.

Plaintiff contends that defendant used excessive force against him when he "slammed" plaintiff to the wall and floor. He argues that because he was restrained by handcuffs, was

not acting aggressively, was not violating any rules and posed no threat to defendant, defendant had no justification for using force on him. However, even construing the facts in the light most favorable to plaintiff, I conclude that no reasonable jury would agree with plaintiff. Padula v. Leimbach, 656 F.3d 595, 600 (7th Cir. 2011) (discussing summary judgment standard). Under plaintiff's version of events, defendant was escorting plaintiff through a cell range in the segregation unit when another inmate pushed or kicked his own cell door in an attempt to scare plaintiff. The cell door made a loud noise and defendant reacted immediately by taking hold of plaintiff's wrists and pushing him forcefully against the wall and then floor. Defendant's actions caused plaintiff to suffer pain, bruising and some swelling above his left eye for several days.

From this record, a reasonable jury could not infer that defendant acted maliciously and sadistically with an intent to cause plaintiff pain. Rather, the record shows that defendant used force in response to a perceived security threat. Defendant heard a loud noise and believed that there was a potential threat to his, plaintiff's or another inmate's safety. Although plaintiff insists that he did not cause the disturbance and did not kick the cell door or struggle away from defendant, these disputed facts are immaterial. Even under plaintiff's version of events, defendant used forced only after he heard the cell door being pushed or kicked. Further, defendant reacted immediately; he did not have time to stop and analyze the situation. At the time, defendant knew only that he was escorting a prisoner through the segregation unit, that prisoners in the segregation unit may be dangerous and unpredictable and that there was a sudden, loud noise next to him. Defendant had been

trained to control inmates by using the wall or floor during such circumstances and that is what defendant did.

The fact that plaintiff was injured by defendant's use of force is not enough to sustain a constitutional claim. Plaintiff has adduced no facts suggesting that defendant acted with an intent to injure plaintiff. For example, there are no facts in the record from which an inference could be drawn that defendant was angry with plaintiff or disliked plaintiff. Compare Richman v. Sheahan, 512 F.3d 876, 882 (7th Cir. 2008) (evidence of "bad blood" between plaintiff and defendants could allow jury to infer that defendants were intending to harm plaintiff when they used force), with Forrest, 620 F.3d at 746 (holding that no reasonable jury could infer that officer employed taser because he was angry when there was no evidence to allow it to draw such an inference). Further, as soon as defendant perceived the security threat to have passed, he completed the escort without further incident or comment. Thus, plaintiff's argument that defendant intended to hurt him is supported only by speculation. Springer v. Durflinger, 518 F.3d 479, 484 (7th Cir. 2008) ("[I]t is well-settled that speculation may not be used to manufacture a genuine issue of fact.") (internal quotation marks omitted).

Plaintiff argues that there was no reason for defendant to *slam* plaintiff against the wall and floor with such force. It may be true that defendant could have taken control of plaintiff with less force. However, even if defendant could have used less force to respond to the potential security threat, an error of judgment does not convert a prison security measure into a constitutional violation. As the Supreme Court has explained,

> To be cruel and unusual punishment, conduct that does not purport to be punishment at all must involve more than ordinary lack of due care for the prisoner's interests or safety. . . . It is obduracy and wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited by the Cruel and Unusual Punishments Clause. . . . The infliction of pain in the course of a prison security measure, therefore, does not amount to cruel and unusual punishment simply because it may appear in retrospect that the degree of force authorized or applied for security purposes was unreasonable, and hence unnecessary in the strict sense.

Whitley, 475 U.S. at 319. See also Guitron v. Paul, 675 F.3d 1044, 1046 (7th Cir. 2012) (plaintiff's allegations that guard bent his wrist and slammed him against wall with "full force" after plaintiff refused to go against wall failed to state excessive force claim because facts showed guard used force only to maintain order). Cf. Graham v. Connor, 490 U.S. 386, 396-97(1989) ("The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.") (applying Fourth Amendment excessive force standard).

To successfully oppose defendant's motion for summary judgment, plaintiff was required to produce evidence that would "support a reliable inference of wantonness in the infliction of pain." Fillmore v. Page, 358 F.3d 496, 504 (7th Cir. 2004). However, the undisputed facts show that no reasonable jury could find that defendant's use of force was anything other than a reasonable, good faith effort to maintain or regain control of what he perceived was a security situation. No reasonable jury would conclude that defendant acted with wantonness for the purpose of harming plaintiff. Therefore, defendant is entitled to summary judgment on plaintiff's claim.

ORDER

IT IS ORDERED that defendant Patrick Hooper's motion for summary judgment, dkt. #47, is GRANTED. The clerk of court is directed to enter judgment for defendant and close this case.

Entered this 18th day of December, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge