No._____

In The
Supreme Court Of The United States

SHANGIA WASHINGTON, Petitioner,

vs.

WARDEN CEDRIC TAYLOR et al., Respondents,

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

APPENDIX

Decision of the United States Court of Appeals for the Eleventh Circuit in *Washington v. Taylor*, et al., April 19, 2021, denying the Petition for Rehearing En Banc, Appeal No. 20-13263.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-13263-CC

SHANGIA WASHINGTON,

Plaintiff - Appellant,

versus

WARDEN,
Baldwin State Prison,
UNIT MANAGER FARLEY,
Baldwin State Prison,
UNIT MANAGER WARREN,
Baldwin State Prison,
OFFICER MILINER,
Baldwin State Prison,

Defendants - Appellees.

Appeal from the United States District Court
for the Middle District of Georgia

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: NEWSOM, LUCK and ANDERSON, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. (FRAP 35, IOP2)

ORD-42

Decision of the United States Court of Appeals for the Eleventh Circuit, Affirming the decision of the District Court in *Washington v. Taylor*, et al, Appeal No. 20-13263.

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-13263
Non-Argument Calendar

D.C. Docket No. 5:19-cv-00178-TES

SHANGIA WASHINGTON,

Plaintiff - Appellant,

versus

WARDEN,
Baldwin State Prison,
UNIT MANAGER FARLEY,
Baldwin State Prison,
UNIT MANAGER WARREN,
Baldwin State Prison,
OFFICER MILINER,
Baldwin State Prison,

Defendants - Appellees.

Appeal from the United States District Court
for the Middle District of Georgia

(March 8, 2021)

Before NEWSOM, LUCK, and ANDERSON, Circuit Judges.

PER CURIAM:

At Baldwin State Prison, Shangia Washington was stabbed 38 times over a period of 62 seconds by two fellow inmates. Washington sued prison officials Krystle Milner,[1] Kenneth Farley, Lilian Warren, and Cedric Taylor, alleging that by failing to protect him, they violated his Eighth Amendment right to be free from cruel and unusual punishment.

The district court granted summary judgment to the prison officials. It held that though prison officials have a duty to protect prisoners from violence at the hands of other prisoners, there was no constitutional violation here. After careful review, we affirm on alternative grounds—because the law underlying the alleged constitutional violations was not clearly established, the officials are entitled to qualified immunity.

I

A

Shangia Washington and fellow inmates Raymond Dugger and Dejuan Gladdney were all housed in Dorm H-3 at Baldwin State Prison.[2] On the evening of December 22, 2017, Washington, Dugger, and Gladdney were watching

[1] The caption on appeal spells Officer Milner's name *Miliner*. We use Milner in accordance with the district court's and the parties' usage.

[2] We summarize the facts as stipulated by both parties for summary judgment.

television in the common space of the dorm. At some point, however, Dugger began taunting Washington. When Washington responded in turn, the situation quickly escalated. Dugger grabbed a knife from his pocket, approached Washington, and threatened to kill him. Washington retreated to his room to grab a weapon—a broomstick. In the ensuing fight, Dugger and Gladdney overcame Washington, and Washington was stabbed 38 times over the course of 62 seconds. Prison officials, unable to end the fight with verbal orders alone, terminated the fight by deploying pepper spray into the dorm.

B

Washington sued prison officials Krystle Milner, Kenneth Farley, Lilian Warren, and warden Cedric Taylor under 42 U.S.C. § 1983. He contends that they violated the Eighth Amendment's prohibition on cruel and unusual punishment when they failed to protect him, and that those violations were contrary to clearly established law, so the officials are not entitled to qualified immunity. *See Farmer v. Brennan*, 511 U.S. 825, 832–33 (1994) (explaining that the Eighth Amendment requires prison officials to "take reasonable measures to guarantee the safety of the inmates" (quoting *Hudson v. Palmer*, 468 U.S. 517, 526–27 (1984)). In particular, Washington says that Milner, the on-duty Building H correctional officer, failed to prevent the fight when it was obvious one was about to occur and to break it up once it began; that unit managers Farley and Warren ignored requests that

Washington made over a month before the incident to be moved to a different building; and that Taylor, the Baldwin State Prison warden, failed to properly staff the prison, which led to Washington's stabbing.

The district court granted summary judgment to all defendants. It reasoned that Washington had shown neither that there was a substantial risk of harm nor that the officials had been deliberately indifferent to that risk. Washington testified that Dugger and Gladdney had been "throwing threats out" to other inmates in Dorm H-3 for over a month and had a "reputation" for violence. But that testimony, the district court explained, showed only a "mere possibility" of injury, not a "strong likelihood," as required by our precedents. Washington had not offered any evidence that Dugger and Gladdney had stabbed or assaulted any other inmates; in fact, Washington had testified that before he was stabbed, he couldn't have "fathom[ed]" that he would be stabbed the way he was. In any event, the district court continued, the officials were not deliberately indifferent to the risk. A prisoner usually must communicate some reason beyond the mere existence of a threat that could permit prison officials to conclude that a particular threat was substantial, and Washington did not offer any such reason here. *See Marbury v. Warden*, 936 F.3d 1227, 1236 (11th Cir. 2019).

Washington timely appealed.

II

We review the district court's ruling on a motion for summary judgment de novo. *Smith v. Fla. Dep't of Corrs.*, 713 F.3d 1059, 1063 (11th Cir. 2013). We may affirm the judgment of the district court on any ground supported by the record. *Bass v. Fewless*, 886 F.3d 1088, 1092–93 (11th Cir. 2018).

III

Qualified immunity protects governmental defendants performing discretionary functions from suit in their individual capacities "unless, at the time of the incident, the 'preexisting law dictates, that is, truly compel[s]' the conclusion for all reasonable, similarly situated public officials" that the defendants' actions violated the plaintiff's federal rights. *Marsh v. Butler Cnty, Ala.*, 268 F.3d 1014, 1030–31 (11th Cir. 2001) (*en banc*) (quoting *Lassiter v. Alabama A&M Univ.*, 28 F.3d 1146, 1151 (11th Cir. 1994) (*en banc*)) (alteration adopted). Given that the prison officials here were performing discretionary duties, Washington must show (1) that the officials violated a constitutional right and (2) that the right was clearly established at the time of the alleged violation. *Marbury*, 936 F.3d at 1232. For a right to be clearly established, the plaintiff may either identify precedents with materially similar facts or show that the violation was so obvious that every reasonable officer would know that his actions were

unconstitutional. *Corbitt v. Vickers*, 929 F.3d 1304, 1311–12 (11th Cir. 2019); *see Hope v. Pelzer*, 536 U.S. 730, 741 (2002).

The Eighth Amendment prohibits cruel and unusual punishments.[3] That prohibition requires prison officials to take reasonable measures to guarantee the safety of the inmates and protect prisoners from violence at the hands of other prisoners. *Farmer*, 511 U.S. at 832–33. Though prison conditions may be harsh, "gratuitously allowing the beating . . . of one prisoner by another serves no 'legitimate penological objective.'" *Id.* at 833 (quoting *Hudson*, 468 U.S. at 548 () (alteration adopted).

Not every injury suffered by one prisoner at the hands of another, however, gives rise to constitutional liability for prison officials. Because "only the unnecessary and wanton infliction of pain implicates the Eighth Amendment," *Farmer*, 511 U.S. at 834 (quotation marks omitted), a prison official must have acted with deliberate indifference to a substantial risk of serious harm. Thus, to prevail on an Eighth Amendment claim, a plaintiff must show "(1) a substantial risk of serious harm; (2) the defendants' deliberate indifference to that risk; and (3) causation." *Marbury*, 936 F.3d at 1233 (quoting *Lane v. Philbin*, 835 F.3d 1302, 1307 (11th Cir. 2016)).

[3] In full, the Eighth Amendment says, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII.

Though we may begin the qualified immunity inquiry with either the constitutional question or the question of whether the violation was clearly established, the Supreme Court has admonished us to "think hard, and then think again" before addressing the merits of the constitutional claim. *See District of Columbia v. Wesby*, 138 S. Ct. 577, 589 n.7 (2018) (quoting *Camreta v. Greene*, 563 U.S. 692, 707 (2011)). For each defendant here, we thus begin—and ultimately end—our analysis with the issue of whether the alleged constitutional violations here were contrary to clearly established law.

We start with unit managers Farley and Warren. Washington contends that Farley and Warren were deliberately indifferent to a substantial risk of harm because they ignored requests that he made over a month before the incident to be moved to a different building. But not every reasonable officer would have known that under our precedents, the risk of harm to Washington was substantial—as opposed to a mere possibility. Washington only cited Dugger and Gladdney's general reputation for violence. He never claimed that Dugger or Gladdney threatened him directly, and in fact, he testified that he didn't know either Dugger or Gladdney before the incident occurred.

Washington cites *Rodriguez v. Sec'y for Dept. of Corrs.*, 508 F.3d 611 (11th Cir. 2007), for support, but that case is distinguishable. There, Rodriguez had informed prison staff that members of his former gang had threatened to kill him

upon release into the general prison population. *Id.* at 612. Rodriguez thus alleged a specific threat to his life by fellow inmates that he knew personally. On those facts, we held that a genuine issue of material fact existed about whether the risk of harm was substantial. *Id.* at 619. Here, by contrast, Washington relies only on Dugger and Gladdney's general reputation for violence.

At the same time, *Marbury v. Warden*, 936 F.3d 1227 (11th Cir. 2019), suggests that the risk of harm here was *not* substantial. There, the prisoner-plaintiff had alleged that he heard from a friend that an unnamed prisoner intended to hurt him. *Id.* at 1235. Even with a specific threat, we nonetheless held that that threat alone did not establish a substantial risk of harm. We noted that the plaintiff needed to provide prison officials with "further information enabling them to conclude that the risk was substantial and not merely possible." *Id.* at 1236. Without a case directly on point, and at least one case that cuts against him, Washington has not shown that Farley or Warren acted contrary to clearly established law.

For a similar reason, warden Taylor is also entitled to qualified immunity. Washington says that Taylor could have provided additional security staff throughout the prison, which would have averted his stabbing. But even if those steps could have prevented the incident, Washington has not alleged—or attempted to show—that the prison conditions generally were so unsafe that any reasonable

official in warden Taylor's shoes would have known of a substantial risk of harm to Washington. *See Harrison v. Culliver*, 746 F.3d 1288, 1299–1300 (11th Cir. 2014) (holding that the prison warden could not be held liable despite evidence of four assaults in a specific location over three years because such evidence was "hardly sufficient" to demonstrate that the prison was one "where violence and terror reign").

The story is slightly different for correctional officer Milner. Washington claims that Milner was deliberately indifferent to a substantial risk of harm by failing to prevent the fight when it was evident that one was about to break out—and further indifferent by failing to attempt to break up the fight once it began. "Prison officials who actually knew of a substantial risk to inmate health or safety may be found free from liability if they responded reasonably to the risk, even if the harm ultimately was not averted." *Rodriguez*, 508 F.3d at 619–20 (quoting *Farmer*, 511 U.S. at 844). Here, while Milner may have known that there was a substantial risk of harm to Washington immediately before the stabbing, we cannot say that it was clearly established that Milner's actions in response were objectively unreasonable. Before the fighting began, Milner ordered Washington and Gladdney to stop arguing, radioed for backup, and reported that inmates in H-3 were arguing. After the fight began, Milner ordered them to stop. And again, she radioed for backup, reporting that the inmates were now fighting. Backup arrived

within one minute, and the fight was over in 62 seconds. Washington cites no cases in which we have found that an officer responding in a materially similar way was held liable under the Eighth Amendment.

To be sure, Washington can also overcome qualified immunity if the constitutional violations were so obvious that any reasonable officer would have known that the officers' actions were unconstitutional. *See Hope*, 536 U.S. at 741. But for the reasons explained above, the violations—if any—were not so egregious as to vitiate qualified immunity.

* * *

In sum, unit managers Farley and Warren and warden Taylor were entitled to qualified immunity because not every reasonable officer in their circumstances would have known that the risk of harm to Washington was "substantial." Correctional officer Milner may have known of a substantial risk of harm to Washington, but it was not clearly established that her actions were unreasonable, and thus deliberately indifferent. All four defendants are thus entitled to qualified immunity.

IV

For the foregoing reasons, we **AFFIRM**.

Order of the District Court in *Washington v. Taylor,* et al, granting Defendants' Motion for Summary Judgement, Civil Action No. 5:19-cv-00178-TES

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

SHANGIA WASHINGTON, ***Plaintiff,*** **v.** **Warden CEDRIC TAYLOR, Unit Manager KENNETH FARLEY, Unit Manager LILIAN WARREN, Correctional Officer KRYSTLE MILNER,** ***Defendants.***[1]	**CIVIL ACTION NO.** **5:19-cv-00178-TES**

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Plaintiff Shangia Washington filed a lawsuit under 42 U.S.C. § 1983 alleging that Defendants Cedric Taylor, Kenneth Farley, Lilian Warren, and Krystle Milner were deliberately indifferent to his safety when they failed to protect him from being stabbed in an altercation with two fellow inmates in violation of his rights secured by "the Eighth Amendment of the Constitution and laws of the United States and the Constitution and laws of the State of Georgia." [Doc. 1 at ¶¶ 16–19, 21]. With the benefit of discovery, Defendants filed a Motion for Summary Judgment [Doc. 14], and after a review of the record and applicable law, the Motion is due to be **GRANTED**.

[1] Washington only sued Defendants in their individual capacities. [Doc. 1 at ¶ 22].

FACTUAL BACKGROUND

Washington has been incarcerated with the Georgia Department of Corrections ("GDC") since 2006. [Doc. 14-2 at ¶ 6]. From January 2017 until January 2018, Washington was housed at Baldwin State Prison ("BSP")[2] and assigned to a cell in Building H due to his mental health issues. [*Id.* at ¶¶ 7–8].[3]

As a mental health dorm, Building H has a Priority 1 staffing profile, which requires the presence of two officers at all times: one officer stationed in the control booth observing its four dorms and the other patrolling those dorms. [*Id.* at ¶ 12]; [Doc. 14-7, Taylor Decl., ¶ 13]. Building H has a common hallway that connects these four distinct dorms—Dorms H-1, H-2, H-3, and H-4. [Doc. 14-2 at ¶ 13]. The observation booth is centrally located in the hallway where an officer can see into each dorm. [*Id.*]. Washington was housed in H-3: a split-level design with stairs connecting the day room[4] of the dorm to a lower level and upper level where inmates' cells are located. [*Id.*

[2] At all times relevant to this lawsuit, Defendant Taylor served as the warden of BSP, responsible for the overall operation of the facility; Defendant Farley was the unit manager for Building K at BSP; Defendant Warren was the unit manager for Building H; and Defendant Milner worked in Building H as a correctional officer tasked primarily with patrolling that building and checking on inmates to make sure they were safe and secure. [Doc. 14-2 at ¶¶ 1–4].

[3] As a mental health dorm, Building H is a supportive living unit where inmates are seen daily by counselors, mental health staff, and other members of the Care and Treatment Unit. [Doc. 14-2 at ¶ 9]; [Doc. 14-7, Taylor Decl., ¶ 7]. Defendant Taylor (the warden) also conducts daily rounds in Building H. [Doc. 14-2 at ¶ 10].

[4] The "day room" is simply a common area where the inmates socialized. [Doc. 14-2 at ¶ 15]. It has three televisions, an ice chest, telephones, and computer kiosk. [*Id.* at ¶ 19].

at ¶¶ 14–16]. Washington and another inmate shared a cell on the upper level of H-3, and Inmates Raymond Dugger, Jr.[5] and Dejuan Gladdney[6] shared a cell on H-3's lower level. [*Id.* at ¶¶ 17–18].

During the evening of December 22, 2017, Washington was watching television in the day room. [*Id.* at ¶ 20]. After his program ended, he gave the television remote to Inmate Dugger who began watching a cartoon with Inmate Gladdney and then Washington "went to [his] room." [*Id.* at ¶¶ 20–21]; [Doc. 14-3, Washington Depo., p. 17:6–7]. Shortly thereafter, Washington returned to the day room—this time, "to watch the sports television." [Doc. 14-3, Washington Depo., p. 17:10–11]. While Washington watched a basketball game, Inmate Dugger began taunting him. [*Id.* at pp. 17:13—18:22]; [Doc. 14-3, Washington Depo., p. 31:8]. An argument escalated, and Washington "ran to [his] room," put on his boots, and returned to the day room with a broken broomstick in hand.[7] [Doc. 14-2 at ¶ 23]; [Doc. 14-3, Washington Depo., pp. 18:19—19:9].

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[5] Defendants state that prior to the incident leading to this case, "[Washington] did not have any conflict with Inmate Dugger. [Doc. 14-2 at ¶ 55]. Washington, however, denies that this statement is true. [Doc. 19-1 at ¶ 55]. He states that Inmate Dugger had "been jugging at [him] for over a month" and "throwing threats out." [Doc. 14-3, Washington Depo., pp. 24:25—25:2, 33:3–4]. "Jugging," as Washington defines the term, means "taunting." [*Id.* p. 18:3–4].

[6] Washington admits that he did not have any conflict with Inmate Gladdney prior to the incident leading to this case. [Doc. 19-1 at ¶ 56].

[7] Given that Inmate Dugger kept "jugging" at him, Washington "ask[ed] multiple different people" to move him out of the H-3 dorm. [Doc. 19-1 at ¶ 60]. However, he never filed a request with the Classification Committee for a housing reassignment or a request for protective custody while he was housed with Inmates Dugger and Gladdney in H-3. [*Id.*]; *see also* [Doc. 14-2 at ¶¶ 59–60]; [Doc. 14-3, Washington Depo., pp. 24:25—25:11]. Only mental health professionals could authorize an inmate's assignment to Building H or authorize his removal to another building. [Doc. 14-2 at ¶ 11].

At the beginning of a BSP surveillance video, Washington can be seen coming down the stairs from his cell with the broomstick while arguing with Inmate Gladdney. [Doc. 14-2 at ¶¶ 26–27]. A few moments later, Washington goes back up the stairs, stands at the top, and continues to argue with Inmate Gladdney, but later comes back down to the day room and "half-swings the broomstick" towards Inmate Gladdney but doesn't hit him. [*Id.* at ¶¶ 28–29]. For "about two minutes" they continued to argue, with Washington traversing the stairs "prominently displaying his broomstick." [*Id.* at ¶ 30].

At this point, Inmates Dugger and Gladdney left the day room and went to the lower level towards their cell; but, less than a minute later, Inmate Gladdney returned to the day room and he and Washington resumed arguing. [*Id.* at ¶¶ 31–32]. Broomstick in hand, Washington walked back down the stairs and approached Inmate Gladdney, but then he began arguing with Inmate Dugger who was standing by the stairs connecting the day room with the lower level of H-3. [*Id.* at ¶¶ 33–34]. Inmate Gladdney turned his back to Washington, and Washington "rushe[d] at Inmate Gladdney," hit him with the broomstick, and, not surprisingly, a full-on fight ensued. [*Id.* at ¶ 35]. Seconds later, Inmate Dugger joined in. [*Id.* at ¶ 36].

During the fight, Washington jumped off of a nearby table, picked up his broomstick, and "once again" used it to attack Inmate Gladdney. [*Id.* at ¶¶ 37–38]. Washington momentarily got the upper hand when he got "on top of Inmate

Gladdney" and was punching him. [*Id.* at ¶ 39]. However, Inmate Dugger had brought a shank to a fist fight. [*Id.* at ¶ 58]; [Doc. 14-10 at p. 32]. In a little over 20 seconds, Inmate Dugger stabbed Washington 38 times, and the three only stopped fighting when another BSP official deployed his pepper spray. [Doc. 14-2 at ¶ 40]; [Doc. 14-3, Washington Depo., pp. 21:22–23; 67:2–3]. Once the inmates stopped fighting, Washington ran out of the dorm and into the common hallway. [Doc. 14-2 at ¶¶ 13, 40].

Before the 62-second fight began, Defendant Milner's patrol of the dorms found her standing in the hallway just outside the door of H-3, and her partner, Officer Johnson (who is not a named defendant in this lawsuit), manned his post in the observation booth.[8] [*Id.* at ¶¶ 13, 41–43]. When the inmates began to argue, Defendant Milner radioed for backup, but, according to Washington, an unnamed officer told her, "Don't call [for backup] until they start fighting." [*Id.* at ¶ 45]; [Doc. 14-3, Washington Depo., p. 26:16–24].

The parties dispute whether Defendant Milner ordered Washington and Inmate Gladdney to stop arguing, whether she ordered Washington to put the broomstick down, and whether Washington ignored her verbal orders. *Compare* [Doc. 14-2 at ¶¶

[8] Based on this, Defendants contend that "[t]wo officers were present at all times during the altercation." [Doc. 14-2 at ¶ 44]. In his Response to Defendants' Statement of Material Facts, Washington neither admits or denies this statement. *See* [*id.*] *in connection with* [Doc. 19-1 at ¶ 44]. Thus, in accordance with the Court's Local Rules, this statement is deemed admitted. LR 56, MDGa ("All material facts contained in the movant's statement which are not specifically controverted by specific citation to particular parts of materials in the record shall be deemed to have been admitted . . . .").

46–48] *with* [Doc. 19-1 at ¶¶ 46–48].[9] On deposition, Washington testified, "[Defendant Milner] wrote a disciplinary report[10] against me saying that she instructed me to put the broomstick down that I broke to use to defend myself. But I refused to put the broomstick down[.]" [Doc. 14-3, Washington Depo., 25:13–18]. Washington's position is that Defendant Milner never "verbally ordered anything." [Doc. 19-1 at ¶ 48]. However, in her declaration, Defendant Milner states that she "verbally ordered [Inmates Washington and Gladdney] to stop [arguing], but they did not" and that she "verbally instructed Inmate Washington to put the stick away and go back to his cell, but he ignored [her] instructions." [Doc. 14-5, Milner Decl., ¶¶ 6–7, 15].

Regardless of whether Defendant Milner issued any verbal order or instruction to the inmates directly, she repeated her request for backup, this time reporting that inmates in H-3 were fighting.[11] [Doc. 14-2 at ¶ 49]. Within one minute, backup arrived

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[9] Here, Defendants make two statements. First, they contend that "[Washington] ignored Defendant Milner's orders." [Doc. 14-2 at ¶ 47]. Second, they claim that "[a]fter [Washington] and Inmates Dugger and Gladdney began fighting, Defendant Milner verbally ordered them to stop." [*Id.* at ¶ 48]. Washington denies both of these statements. He "refutes [that] Defendant Milner order[ed] him to put down the broomstick[,]" and that "Defendant Milner verbally ordered anything." [Doc. 19-1 at ¶¶ 47–48]. Technically, Defendants' two statements can, under Local Rule 56, be deemed admitted because Washington, in denying their statements, failed to controvert them by "specific citation to particular parts of materials in the record." LR 56, MDGa. However, as discussed throughout the remainder of this Order, the factual issue of whether Defendant Milner gave any verbal order is not material to the Court's ruling.

[10] Washington was provided a disciplinary report hearing, and he was "found guilty of those charges and was sanctioned." [Doc. 14-2 at ¶ 53].

[11] As the only officer present at the actual scene of the fight within Building H, Defendant Milner, in following GDC protocol and training, knew that she needed to wait for backup to arrive before she opened the door to H-3 or enter the cell where the three inmates were fighting. [Doc. 14-2 at ¶ 52]; [Doc. 14-5, Milner Decl., ¶ 23 ("[Backup] is necessary because the fight may be a ruse to get the door open, thereby endangering [Defendant Milner], [her] colleague, and other inmates.")].

and "they too ordered [Washington] and Inmates Dugger and Gladdney to stop."[12] [*Id.* at ¶ 50]. When the inmates continued to ignore these orders, an officer doused them with pepper spray, and the fighting stopped.[13] [*Id.* at ¶ 51].

DISCUSSION

A. Legal Standard

A court must grant summary judgment "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 not genuine unless, based on the evidence presented, "'a reasonable jury could return a verdict for the nonmoving party.'" *Info. Sys. & Networks Corp. v. City of Atlanta*, 281 F.3d 1220, 1224 (11th Cir. 2002) (quoting *United States v. Four Parcels of Real Prop.*, 941 F.2d 1428, 1437 (11th Cir. 1991)); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "The moving party bears the initial responsibility of informing the court of the basis for its motion." *Four Parcels*, 941 F.2d at 1437. The movant may cite to particular parts of materials in the record, including, "'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a

[12] Here, Washington admits that "*they too* ordered [him] and Inmates Dugger and Gladdney to stop." [Doc. 19-1 at ¶ 50] (emphasis added). If this fact is true, and Washington admitted that it is, logic dictates that the implication of "too" means that someone else, Defendant Milner ostensibly, had already ordered Washington and Inmates Dugger and Gladdney to stop fighting before backup gave its own set of orders. *See* n.9, *supra*.

[13] Defendants Farley, Taylor, and Warren were not present and did not observe any part of this incident. [Doc. 14-2 at ¶ 54].

genuine issue of material fact." *Id.* (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)); Fed. R. Civ. P. 56(c)(1)(A).[14] "When the nonmoving party has the burden of proof at trial, the moving party is not required to 'support its motion with affidavits or other similar material negating the opponent's claim[]' in order to discharge this 'initial responsibility.'" *Four Parcels*, 941 F.2d at 1437–38 (quoting *Celotex*, 477 U.S. at 323). Rather, "the moving party simply may show—that is, point out to the district court—that there is an absence of evidence to support the nonmoving party's case." *Id.* (quoting *Celotex*, 477 U.S. at 324) (cleaned up). Alternatively, the movant may provide "affirmative evidence demonstrating that the nonmoving party will be unable to prove its case at trial." *Id.*

If this initial burden is satisfied, the burden then shifts to the nonmoving party, who must rebut the movant's showing "by producing . . . relevant and admissible evidence beyond the pleadings." *Josendis v. Wall to Wall Residence Repairs, Inc.*, 662 F.3d 1292, 1315 (11th Cir. 2011) (citing *Celotex Corp.*, 477 U.S. at 324). The nonmoving party does not satisfy its burden "if the rebuttal evidence 'is merely colorable or[] is not significantly probative' of a disputed fact." *Id.* (quoting *Anderson*, 477 U.S. at 249–50). "A mere scintilla of evidence supporting the [nonmoving] party's position will not suffice." *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir. 1997). Further, where a party fails

[14] Courts may consider all materials in the record, not just those cited by the parties. Fed. R. Civ. P. 56(c)(3).

to address another party's assertion of fact as required by Federal Rule of Civil Procedure 56(c), the Court may consider the fact undisputed for purposes of the motion. Fed. R. Civ. P. 56(e)(2); *see also* nn.8–9, *supra*. However, "credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge. *Anderson*, 477 U.S. at 255. Succinctly put,

> [s]ummary judgment is not a time for fact-finding; that task is reserved for trial. Rather, on summary judgment, the district court must accept as fact all allegations the [nonmoving] party makes, provided they are sufficiently supported by evidence of record. So[,] when competing narratives emerge on key events, courts are not at liberty to pick which side they think is more credible. Indeed, if "the only issue is one of credibility," the issue is factual, and a court cannot grant summary judgment.

Sconiers v. Lockhart, 946 F.3d 1256, 1263 (11th Cir. 2020) (internal citations omitted). Stated differently, "the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson*, 477 U.S. at 249. "The evidence of the [nonmovant] is to be believed, and all justifiable inferences are to be drawn in his favor." *Id.* at 255. And "if a reasonable jury could make more than one inference from the facts, and one of those permissible inferences creates a genuine issue of material fact, a court cannot grant summary judgment"; it "must hold a trial to get to the bottom of the matter." *Sconiers*, 946 F.3d at 1263.

B. Defendants' Motion for Summary Judgment

In support of their Motion, Defendants contend that they are entitled to qualified immunity because Washington cannot show an Eighth Amendment violation against Defendants Taylor, Farley, Warren, and Milner and because he cannot show a supervisory liability claim against Defendant Taylor under the Eighth Amendment. *See generally* [Doc. 14-1].

"The defense of qualified immunity completely protects government officials performing discretionary functions from suit in their individual capacities unless their conduct violates clearly established statutory or constitutional rights of which a reasonable person would have known." *Marbury v. Warden*, 936 F.3d 1227, 1232 (11th Cir. 2019) (citation omitted); [*Id.* at pp. 17–20]. Since neither party disputes that Defendants were acting within the scope of their discretionary authority as correctional officers working at BSP at all times relevant to this case, the burden shifts to Washington to show that Defendants violated a constitutional right and that the right was clearly established at the time of the alleged violation. *Id.*; *see also* [Doc. 19 at pp. 11–12]; [Doc. 20 at pp. 7–9 (citing [Doc. 1 at ¶¶ 1–4])].

1. Eighth Amendment Claim

Violent assaults in prison are not "part of the penalty that criminal offenders pay for their offenses against society." *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (citation omitted). And in this case, no one disputes that prison officials have a duty to protect

prisoners from violence at the hands of other prisoners and that a prison official's deliberate indifference to a substantial risk of serious harm violates the Eighth Amendment. *Id.* at 828, 833 (citation omitted). That said, "it is not . . . every injury suffered by one prisoner at the hands of another that translates into *constitutional* liability for prison officials responsible for the victim's safety." *Id.* at 834 (emphasis added).

To establish a § 1983 claim for deliberate indifference, the prisoner must first "show that he is incarcerated under conditions posing a substantial risk of serious harm." *Id.* (citation omitted). Second, "a prison official must have a 'sufficiently culpable state of mind' . . . one of 'deliberate indifference' to [the prisoner's] health or safety[.]" *Id.* (citations omitted). Even if an Eighth Amendment violation is shown, the prisoner must also be able to demonstrate "causation" between that violation and the prison official's conduct. *Marbury*, 936 F.3d at 1233. In short, "[t]o survive summary judgment on a deliberate indifference failure-to-protect claim, '[Washington] must produce sufficient evidence of (1) a substantial risk of serious harm; (2) . . . [D]efendant[s'] deliberate indifference to that risk; and (3) causation.'" *Mosley v. Zachary*, --- F.3d ----, 2020 WL 4249433, at *3 (11th Cir. July 24, 2020).

a. *Substantial Risk of Serious Harm*

Turning first to whether Washington faced a substantial risk of serious harm, this element "is assessed objectively and requires [him] to show 'conditions that were

extreme and posed an unreasonable risk of serious injury to his future health or safety.'" *Marbury*, 936 F.3d at 1233 (quoting *Lane v. Philbin*, 835 F.3d 1302, 1307 (11th Cir. 2016)). "[A]n excessive risk of inmate-on-inmate violence at a jail creates a substantial risk of serious harm." *Lane*, 835 F.3d at 1307. However, "occasional, isolated attacks by one prisoner on another may not constitute" an Eighth Amendment violation. *Id.* Instead, it is "confinement in a prison where violence and terror reign [that] is actionable." *Id.*

There are two ways by which Washington can show an objectively substantial risk of serious harm: (1) by presenting an individual risk that is personal to him or (2) by showing an environmental risk based on generally dangerous prison conditions. *See Bugge v. Roberts*, 430 F. App'x 753, 758 (11th Cir. 2011); *Marbury*, 936 F.3d at 1234 ("To establish deliberate indifference based on a generalized risk, the plaintiff must show 'that serious inmate-on-inmate violence was the norm or something close to it.'"). Here, Washington must proceed on the individualized-risk track because he failed to submit any evidence into the record showing that BSP is a generally dangerous prison.[15]

In briefing, however, Washington doesn't really give examples of how he can show this objectively substantial risk. *See, e.g.*, [Doc. 19 at pp. 7–8]. Instead, Washington

[15] When it comes to a generalized risk, Washington never disputes Defendants' contention that he couldn't show that BSP is a prison "where violence and terror reign." [Doc. 14-1 at p. 7 (quoting *Harrison v. Culliver*, 746 F.3d 1288, 1299 (11th Cir. 2014))]; [Doc. 19 at pp. 7–9]. Even if Washington attempted to take this route and argue that BSP is a generally dangerous institution, he would not be successful because "he has made no allegations regarding the specific features of the prison that would make it particularly violent." *Marbury*, 936 F.3d at 1235.

appears to assume that he has sufficiently shown the requisite risk and largely focuses his attention towards arguments that Defendants knew about it. [*Id.*]. Such arguments are related to the second element of the deliberate-indifference analysis, not the first. *Mosley*, 2020 WL 4249433, at *3. Notwithstanding this rather important omission, Washington's deposition does most of the heavy lifting for him.

On the issue of whether he faced an objectively substantial risk of serious harm, Washington testified that Inmates Dugger and Gladdney were "jugging" at him "and throwing threats out" "for over a month." [Doc. 14-3, Washington Depo., p. 25:1–2]. Now, these threats, as Washington candidly admits, weren't always directed at him. *See, e.g.*, [*id.* at p. 50:20–21 (Washington's deposition testimony showing that Inmates Dugger and Gladdney were "taunting everybody in the dorm")]. For example, Washington recounted one instance during his deposition where Inmates Dugger and Gladdney—a week before he was stabbed—"was threatening this white dude and they was flashing him knives." [*Id.* at p. 49:9–11]. From Washington's point of view, "[t]hese folks been in prison, they establish a reputation for what they do with this violence. So[,] it's known that he [*sic*] will stab someone." [*Id.* at p. 51:18–20].

When asked about Inmate Dugger's actions specifically, Washington stated that Inmate Dugger "brags about violence, about stabbing people, how he was previously at this camp and they transferred him for stabbing [and] robbing people. This is what he brags about, like it's a badge of honor. 'I just got off lockdown for stabbing somebody.'"

[*Id.* at pp. 32:3; 33:9–14]. When describing Inmate Dugger's actions, Washington says that Inmate Dugger "will get up and . . . will just be talking loud early in the morning about people he stabbed, situations he done been in, about his war stories" and say things like "'I don't mind about stabbing. That's what I like to do because that's what I do, and I'm going to end up stabbing one of you mother fuckers [*sic*].'" [*Id.* at 54:5–8]. Not only has Inmate Dugger "engag[ed] in conversation with [other] people" telling them, "I will wet your ass up," he has also made the same comment to Washington. [*Id.* at p. 54:15–21].

As for Inmate Gladdney, Washington testified that although he was "not as verbal," "he had the same mentality as [Inmate] Dugger," and would let people "know that he's . . . 'with it' . . . on the violence." [*Id.* at p. 56:15–20]. Inmate Gladdney's alleged affiliation with a gang also made Washington want to move because "the only thing you hear from" his "particular organization . . . is violence and death." [*Id.* at pp. 57:14—58:3]. At bottom, "from the things [Washington] observed" as to "[t]heir actions," he saw Inmate Dugger and Gladdney's "presence in the dorm" as a "danger to [his] life." [*Id.* at pp. 53:8; 60:20–21; 61:10–14].

In the Eleventh Circuit, "[t]here must be a 'strong likelihood' of injury, 'rather than a mere possibility'" before liability under the Eighth Amendment will attach. *Brooks v. Warden*, 800 F.3d 1295, 1301 (11th Cir. 2015). Thus, Washington's deliberate-

indifference claim fails because he has not demonstrated a genuine issue of material fact as to whether he faced a strong likelihood of a substantial risk of injury. Here's why.

The only thing revealed by the evidence is how Washington perceived Inmates Dugger and Gladdney during the "six weeks or so" they were housed together in H-3. [Doc. 14-3, Washington Depo., pp. 48:4–7; 53:21–23]. Within that timeframe, there is no evidence that Washington saw either Inmate Dugger or Inmate Gladdney stab anyone prior to their altercation on December 22, 2017. [*Id.* at pp. 57:3—61:13]. Even more telling is that Washington never offered any evidence that he heard from other inmates about an occasion where Inmate Dugger or Inmate Gladdney stabbed or violently assaulted another inmate within this approximate six-week period. [*Id.* at p. 66:5–11]; *see also* [Doc. 14-3 at p. 52:21–24 (showing that aside from what Washington personally witnessed about Inmates Dugger and Gladdney, he learned some things about their "reputation" through "inmates talk[ing]")]. Even based on his perceptions and "inmate[] talk," Washington testified that he "didn't have in [his] mind or fathom that this man's fixing to pull a knife out on [him] or [that] he's fixing to come at [him] the way he's fixing to come at [him]." [Doc. 14-3, Washington Depo., pp. 52:23¬24; 118:26—119:3].

Based on this evidence, Washington's assertion of a risk personal to him demonstrates only a mere possibility of an assault and that is not enough—he needed to plausibly allege a strong likelihood of serious harm. *Brooks*, 800 F.3d at 1301. Without it,

Washington has failed to produce sufficient evidence that he was "incarcerated under conditions posing a substantial risk of serious harm" to support the first element of his Eighth Amendment claim. *Mosley*, 2020 WL 4249433, at *3. His inability to establish the first element could end our analysis. However, out of an abundance of caution and in order to give the parties the most thorough decision possible, the Court will, for argument's sake, assume that even if the facts of this case could demonstrate a substantial risk of serious harm, there is nothing in the record to show that Defendants were aware of—or were deliberately indifferent to—that risk.

b. *Deliberate Indifference to a Substantial Risk of Serious Harm*

The second element—whether Defendants were deliberately indifferent to the substantial risk of serious harm—"has both a subjective and objective component." *Marbury*, 936 F.3d at 1233; *Mosely*, 2020 WL 4249422, at *4. That is, Washington must show both that Defendants actually (subjectively) knew that he faced a substantial risk of serious harm and that they disregarded that known risk by failing to respond to it in an (objectively) reasonable manner. *Mosely*, 2020 WL 4249433, at *4 (citation omitted). Even if Washington can establish that Defendants actually knew of a substantial risk to his safety, Defendants "may be found free from liability if they responded reasonably to the risk, even if the harm ultimately was not averted." *Farmer*, 511 U.S. at 844.

Washington attempts to show that Defendants subjectively knew of the substantial risk of serious harm he faced by directing the Court's attention to *Rodriguez*

v. Secretary for Department of Corrections. 508 F.3d 611, 618–20 (11th Cir. 2007). In that case, the Eleventh Circuit Court of Appeals reversed a grant of summary judgment in favor of a prison official because the prisoner informed prison officials that he feared for his safety, requested to be moved, and was stabbed by one of the fellow prisoners he feared after his request was denied. *Id.* Specifically, the appellate court reasoned that where a prisoner verbally informs a prison official on at least two occasions that his life had been threatened and submits a written request further detailing a fear for safety, there is evidence of subjective knowledge to get his claim to a jury. *Id.* at 618.

Rodriguez is distinguishable for two reasons. First, according to Washington's deposition testimony, no one had ever threatened his life before he and Inmates Dugger and Gladdney got into the fight. It wasn't until after Washington gave Inmate Dugger the television remote, and the two started to exchange words, that Inmate Dugger said, "I'm going to kill you," to Washington. [Doc. 14-3, Washington Depo., pp. 17:1—18:22]. Second, unlike the prisoner in *Rodriguez*, Washington admits that—albeit because "[t]hey wouldn't let [him]"—he "never filed a request for protective custody at BSP" or a "request with the Classification Committee for a housing reassignment . . . while he was house[d] in the same building as Inmates Dugger and Gladdney." [*Id.* at p. 64:5–17]; [Doc. 19-1 at ¶¶ 59–60]. He only "ask[ed] multiple different people" to move him to a different building and without an unattenuated life threat and a written request

submitted to the appropriate prison official, *Rodriguez* does little, factually, to help his case.[16] [Doc. 19-1 at ¶ 60].

In *Marbury*, however, a prisoner "repeatedly asked to be transferred because he was concerned about a general lack of safety in his cell block." 936 F.3d at 1233–34. In the letters to his warden and the verbal requests he made to a correctional officer at his prison, "he told them that he had witnessed fifteen inmate-on-inmate stabbings that he attributed to gang affiliations" and "express[ed] a fear for his own safety." *Id.* at 1231, 1234. Nevertheless, the Eleventh Circuit Court of Appeals held that "this evidence was insufficient to establish deliberate indifference to a substantial risk of serious harm." *Id.* at 1234. In so holding, the Court explained that "a plaintiff must show 'more than a generalized awareness of risk' to make out a deliberate indifference claim." *Id.*

In this case, Washington verbally "request[ed]" "to move out of the dorm" for over a month "to more than five people." [*Id.* at p. 33:6–7; 47:13–14; 89:7–8; 108:25—109:2]. Of these "more than five people," only two of them are named as defendants in this case: Defendant Farley and Defendant Warren. [Doc. 14-3, Washington Depo., p. 109:1]. The other prison officials to whom Washington requested to move are: Captain Bland, Lieutenant Easley, and Lieutenant Prosser, his mental health counselor, and the mental health director, but "they would not move [him]." [*Id.* at 25:4–11; 61:15–21; 62:1].

[16] Washington's requests were only verbal, and there is no evidence that he submitted a written request to prison officials who had the authority to remove him from Building H. [Doc. 14-2 at ¶ 11]; [Doc. 19-1 at ¶¶ 59–60]; *see also* n.7, *supra*.

Let's break down Washington's requests. At his deposition, Washington said that he was requesting to move because he "didn't want to fight anybody." [*Id.* at p. 108:23–25]. He told these BSP officials "that [he was] having problems in the dorm" and that he "need[ed] to move." [*Id.* at p. 61:15–21; 81:22 ("I'm having problems in the dorm, please move me."); 114:21–22 ("I'm having problems in the dorm, can you please move me.")]. As for Defendant Farley, Washington says that he "had been trying to move for over a month because [Inmates Dugger and Gladdney] kept jugging and throwing threats out." [*Id.* at pp. 24:25—25:2]. As for Defendant Warren, Washington says that he asked her "the same day [he] . . . approached Lieutenant Easley who was the shift supervisor[,]" but she told him, "No, I can't move you." [*Id.* at p. 114:12–18]. All he told Defendant Warren, however, was that he was "having problems in the dorm" and that he "couldn't name any names because it would cause further problems." [*Id.* at pp. 114:21–22; 115:1–2]. By Washington's account, he didn't need to "name any names" because Defendant Warren and Defendant Farley "already kn[e]w" who he was talking about since "other folks was [*sic*] having issues with [Inmates Dugger and Gladdney]." [*Id.* at pp. 114:23—115:5]. And lastly, as for Defendant Taylor, Washington testified that "[h]e had to" know about the problems because "he's over the whole compound." [*Id.* at 115:6–9].

Washington contends that Inmates Dugger and Gladdney's "violent disposition" coupled with "over a month's worth of small incidents leading up to" "[t]he fight" are

enough to show a substantial risk to his safety and that Defendants knew of that risk. [Doc. 19 at p. 8]. In short, Washington argues that Defendants knew that Inmates Dugger and Gladdney were "bullies" and that they knew about Inmate Dugger's violent nature. [*Id.* at p. 120:1–9].

Defendants, on the other hand, deny that they knew any of this. By Defendants' account, Washington never expressed any fears to them or asked any of them to transfer him from Building H, or H-3, specifically. First, Defendant Farley states that "[p]rior to December 22, 2017, [he] was not aware that Inmate Washington had any security concerns" and that "[he] was never aware that Inmate Washington had any problems with," was "afraid of," or "that he needed protection, or to be separated, from" Inmates Dugger and Gladdney. [Doc. 14-4, Farley Decl., ¶¶ 12–13]. Moreover, according to Defendant Farley, Washington "never asked" him for a transfer to another

building at BSP "for protective custody."[17] [*Id.* at ¶ 8]. Second, Defendant Milner[18] stated that Washington "never indicated to [her] that he was in danger, that he wanted to move out of H-3, or that he was afraid of Inmates Dugger and Gladdney." [Doc. 14-5, Milner Decl., ¶ 28]. And third, Defendant Taylor stated that "[i]n December of 2017, and the months prior," "[he] was not aware that . . . Washington was living in fear of" Inmates Dugger or Gladdney" and that "during [his] daily rounds of Building H" "Washington never informed [him] that he was living in fear of Inmates Dugger and Gladdney" [Doc. 14-7, Taylor Decl., ¶¶ 6, 8–9]. Not only did Defendant Taylor state that he was unaware of any fear, he also stated that "[he] was not aware that . . . Washington

[17] In his deposition testimony, however, Washington states "[Defendant] Farley said he couldn't move me." [Doc. 14-3, Washington Depo., p. 25:6].

[18] Washington also claimed that because Defendant Milner failed to intervene, she is liable under the Eighth Amendment. [Doc. 1 at ¶¶ 16–17]. For the reasons now discussed, Defendant Milner is entitled to summary judgment on this claim. "Prison correctional officers may be held directly liable under § 1983 if they fail or refuse to intervene when a constitutional violation occurs in their presence." *Terry v. Bailey*, 376 F. App'x 894, 896 (11th Cir. 2010) (citing *Ensley v. Soper*, 142 F.3d 1402, 1407 (11th Cir. 1998)). The burden is on Washington to show that Defendant Milner was in a position to intervene but failed to do so. *Hadley v. Gutierrez*, 526 F.3d 1324, 1330–31 (11th Cir. 2008). Even if a constitution violation was at play in this case, the evidence clearly shows that Defendant Milner's actions were reasonable. She followed her training to diffuse the altercation between Washington and Inmates Dugger and Gladdney and to ensure the safety of herself and the other inmates at BSP. Moreover, this district has previously held, "[r]egardless of the presence or absence of a weapon in the hands of the attacking inmates, 'no rule of constitutional law requires unarmed officials to endanger their own safety in order to protect a prison inmate threatened with physical violence.'" *Seals v. Marcus*, No. 1:11–CV–99 (WLS), 2013 WL 656873, at *8 (M.D. Ga. Jan. 25, 2013) (quoting *Longoria v. Texas*, 473 F.3d 586, 594 (5th Cir. 2006)).

wanted to move from Building H" and that "[he] was not aware that there were any problems between . . . Washington and Inmates Dugger and Gladdney.[19] [*Id.* at ¶ 11].

With Washington's version of the facts and Defendants' version, we clearly have "competing narratives [that] emerge on key events." *Sconiers*, 946 F.3d at 1263. The Court, therefore, is "not at liberty to pick which side [it] think[s] is more credible. *Id.* No, what the Court must do is "accept as fact all allegations" that Washington made, as "the [nonmoving] party," to the extent "they are sufficiently supported by evidence of record." *Id.* (citing *Anderson*, 477 U.S. at 251). Knowing what we know: who Washington told and what he told them, the Court is faced with a strikingly similar issue recently confronted by the Eleventh Circuit Court of Appeals, and it must decide whether a reasonable jury could find Washington's statement that he was "having problems in the dorms," "without any further details," sufficient to make Defendants aware of a substantial risk of serious harm. [Doc. 14-3, Washington Depo., pp. 61:16–17; 81:22; 114:21–22]; *Marbury*, 936 F.3d at 1236. Under current Eleventh Circuit precedent, the Court concludes that Washington's deliberate-indifference claim cannot proceed.

[19] Defendant Warren "was the Unit Manager for Building H," in 2017. [Doc. 14-8, Warren Decl, ¶ 3]. However, given that she "was also a compliance specialist and worked to ensure that BSP passed its audits by the American Corrections Association," she "was rarely at BSP or Building H." [*Id.* at ¶ 4]. Primarily focused on her work with the American Corrections Association, Defendant Warren stated that in December 2017, "the shift supervisor and the sergeant assigned to Building H" managed it. [*Id.* at ¶ 5]. Notwithstanding her rare physical presence at BSP or Building H, Warren stated that "Washington never asked [her] for protective custody at any time in 2017," "never disclosed to [her] that he needed protective custody, or a transfer, because he felt threatened by Inmate Dugger or Inmate Gladdney," and that "[she] had no reason to believe that Inmate Washington faced any risk of harm from Inmates Dugger or Gladdney at any time prior to December 22, 2017." [*Id.* at ¶¶ 6, 12, 14].

This precedent establishes that "officials must possess enough details about a threat to enable them to conclude that [the threat] presents a strong likelihood of injury, not a mere possibility." *Marbury*, 936 F.3d at 1236 (citations omitted). "The unfortunate reality is that 'threats between inmates are common and do not, under all circumstances, serve to impute actual knowledge of a substantial risk of harm." *Id.* (citation omitted). Successful deliberate-indifference claims will generally require some further reason—beyond a prisoner informing prison officials of the threat—that could permit prison officials to conclude that a particular threat evidenced a substantial threat, as opposed to the mere possibility, of serious harm. *Id.* In other words, the prisoner must communicate more than the generic "problems" of prison life to alert the prison official that something needs to change. And in the Eleventh Circuit, "more than a mere awareness of an inmate's generally problematic nature" is required to substantiate a claim for deliberate indifference. *Johnson v. Boyd*, 701 F. App'x 841, 845 (11th Cir. 2017) (citation omitted); *Carter v. Galloway*, 352 F.3d 1346, 1350 (11th Cir. 2003) (holding that there must be much more than mere awareness of an inmate's generally problematic nature).

As for the required "further reason," Washington simply doesn't supply one, and "unless the [prison] official knows of and disregards an excessive risk to inmate health of safety[,]" that prison official "cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement." *Mosely*, 2020

WL 4249433, at *4 (citation omitted). Eighth Amendment caselaw requires that "the [prison] official must both be aware of facts from which an inference could be drawn that a substantial risk of serious harm exists, and [that prison official] must also draw the inference." *Id.* (citing *Farmer*, 511 U.S. at 837).

Indeed, the Eleventh Circuit Court of Appeals held in *Rodriguez*, *supra*, that where a "prisoner informed prison staff that members of his former gang had threatened to kill him upon release into the general prison population," this information "was enough to place" the prison officials "on notice of a substantial risk of harm." *Id.* at 1236–37 (citing *Rodriguez*, 508 F.3d at 612–15). However, the *Rodriguez* court "observed that a vague statement like 'I have a problem with another inmate in this compound," absent some information 'about the nature of the anticipated risk,' would not have created a genuine issue of fact regarding deliberate indifference to a substantial risk of serious harm." *Id.* at 1237 (quoting *Rodriguez*, 508 F.3d at 621–22).

This is precisely what Washington told to at least five prison officials at BSP—that he was "having problems." *See, e.g.*, [Doc. 14-3, Washington Depo., pp. 61:16–17; 81:22; 114:21–22]. Even though Washington didn't (nor does the law require him to) "identify the person who was threatening him by name" to BSP officials, it does require him to provide "other facts" to put Defendants (and the other prison officials) "on notice that he faced a substantial risk of serious harm." *Marbury*, 936 F.3d at 1237; [Doc. 14-3, Washington Depo., p. 115:1–5]. Washington's failure to present evidence that he

conveyed "other facts" to "put [BSP officials] on notice" of a substantial risk, renders his statement exactly like the one clearly rejected by the *Rodriguez* court.

Sure, the Court accepts as fact (because it is "sufficiently supported by" Washington's deposition) that Washington told BSP officials that he was "having problems in the dorm." *Sconiers*, 946 F.3d at 1263 (citing *Anderson*, 477 U.S. at 251)); [Doc. 14-3, Washington Depo., pp. 61:16–17; 81:22; 114:21–22]. The Court, to give Washington the benefit of all doubt, will even go one step further and make a small justiciable inference that Defendants knew that his complaints were about Inmates Dugger and Gladdney. *See* [*id.* at pp. 114:3—115:2 (Washington providing generalized responses to unobjected-to compound questions from his attorney on direct examination during his deposition regarding what he told Defendants Farley and Warren)]; *Anderson*, 477 U.S. at 255. However, even making this leap in Washington's favor, it does not affect Defendants' entitlement to summary judgment because he has failed to present evidence to "support a reasonable jury's finding that [Defendants] harbored a subjective awareness that [he] was in serious danger." *Marbury*, 936 F.3d at 1238.

Washington himself said that he "didn't . . . fathom" something like this happening to him. [Doc. 14-3, Washington Depo., pp. 118:25—119:1]. And if Washington didn't, how could Defendants—especially given his vague informational statement? At most, Washington has sufficiently shown "*some* risk of harm," but that is

insufficient for a deliberate-indifference claim. *Marbury*, 936 F.3d at 1238 (citations omitted). The evidence in this case, "would allow a jury to conclude that [Defendants and the other BSP officials were] put on notice that [Washington] faced some unspecified risk of harm to his well-being—not that [they were] aware he faced the type of substantial risk of serious harm necessary to establish deliberate indifference." *Id.*

As the Eleventh Circuit Court of Appeals stated in *Marbury*, "[t]o allow" a deliberate-indifference claim like Washington's "to proceed absent sufficient evidence that . . . [D]efendants were subjectively aware that he faced a substantial risk of serious harm would elide the 'subtle distinction' between deliberate indifference and mere negligence." 936 F.3d at 1238. Based on the facts of this case, there simply isn't enough to show that Defendants had subjective knowledge that Washington faced a substantial risk of serious harm. Accordingly, Washington cannot show that Defendants violated a constitutional right, and they are entitled to qualified immunity.

2. Supervisory Liability for Defendant Taylor

As for Washington's separate claim for supervisory liability[20] against Defendant Taylor, § 1983 requires proof of a causal link between a defendant's acts and the alleged constitutional deprivation. *Averhart v. Warden*, 590 F. App'x 873, 874 (11th Cir. 2014) (citing *LaMarca v. Turner*, 995 F.2d 1526, 1538 (11th Cir. 1993)). As explained above, Washington failed to present evidence that he suffered a constitutional deprivation in this case; thus, Defendant Taylor is entitled to summary judgment on this claim.

[20] Section 1983 claims may not be brought against supervisory officials solely on the basis of vicarious liability or respondeat superior. *Averhart*, 590 F. App'x at 874 (citing *Keating v. City of Miami*, 598 F.3d 753, 762 (11th Cir. 2010)). To state a supervisory claim, a plaintiff must show the existence of a causal connection between the actions of the supervisor and the alleged constitutional deprivation by establishing: (1) a history of widespread abuse which put the supervisor on notice of the need to correct the alleged deprivation which he failed to correct, or (2) that the supervisor had a custom or policy that resulted in deliberate indifference to constitutional rights, or (3) facts which support an inference that the supervisor directed other defendants to act unlawfully or knew that other defendants would act unlawfully, and failed to stop them from doing so. *Cottone v. Jenne*, 326 F.3d 1352, 1360 (11th Cir. 2003) (citations omitted). "Supervisors are generally entitled to rely on their subordinates to respond appropriately to situations absent clear or widespread evidence to the contrary[,]" and "[t]he standard by which a supervisor may be held liable for the actions of subordinates is 'extremely rigorous.'" *Lazarus v. Hill*, No. 3:14–CV–21 (CAR), 2014 WL 4276208, at *1 (M.D. Ga. Aug. 29, 2014) (first quoting *King v. Henry*, No. 5:09cv365/MCR/EMT, 2011 WL 5877070, at *10 (N.D. Fla. Sept. 19, 2011) and then quoting *Cottone*, 326 F.3d at 1360).

CONCLUSION

For the reasons discussed above, Washington cannot show that any Defendant violated the Eighth Amendment so the Court **GRANTS** Defendants' Motion for Summary Judgment [Doc. 14].[21]

SO ORDERED, this 17th day of August, 2020.

S/ Tilman E. Self, III
TILMAN E. SELF, III, JUDGE
UNITED STATES DISTRICT COURT

[21] Washington also claimed that Defendants violated "the Constitution and laws of the State of Georgia." [Doc. 1 at ¶ 21]. Other than his bare-bones allegation that Defendants violated the Georgia Constitution, he never alleges any specific state-law violation. Nevertheless, "[t]he Georgia Constitution provides that state officers and employees 'may be liable for injuries and damages if they act with actual malice or with actual intent to cause injury in the performance of their official functions.'" *Goodwin v. Crawford Cty.*, No. 5:18-cv-00030-TES, 2020 WL 873920, at *13 (M.D. Ga. Feb. 21, 2020) (quoting Ga. Const., art 1, § 2, ¶IX(d)). Thus, without demonstrating that Defendants acted with actual malice or with actual intent to cause injury while on the job, it is unlikely that Washington would pierce Defendants' entitlement to official immunity. In any event, Washington has abandoned his state-law claims because he never argued them in his Response [Doc. 19] to Defendants' Motion for Summary Judgment. *See Wilkerson v. Grinnell Corp.*, 270 F.3d 1314, 1322 (11th Cir. 2001) (finding claim abandoned, and affirming grant of summary judgment, as to claim presented in complaint but not raised in initial response to motion for summary judgment).