

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 20-11097  
Non-Argument Calendar

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D.C. Docket No. 3:18-cv-00293-TJC-JRK

DARRELL WAYNE BUTLER,

Plaintiff - Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Defendant,

WILLIAM B. BLITCH,  
c/o Captain sued in their individual capacities,  
and sued in their official capacities,

JOHN DOE TOMLIN,  
c/o Sergeant sued in their individual capacities,  
and sued in their official capacities,

R. LEE,  
c/o Sergeant sued in their individual capacities,  
and sued in their official capacities,

JOHN DOE BUTLER,  
c/o Sergeant sued in their individual capacities,  
and sued in their official capacities,

Defendants - Appellees.

Appendix - A

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

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(September 21, 2021)

Before NEWSOM, BRASHER and MARCUS, Circuit Judges.

PER CURIAM:

Darrell Butler, a state prisoner proceeding pro se, appeals from the district court's grant of summary judgment in favor of prison officials, in his 42 U.S.C. § 1983 action alleging that the officials had used excessive force in violation of the Eighth Amendment during a cell extraction. On appeal, Butler argues that the district court erred in granting summary judgment to the officials, on the ground that there was a genuine dispute of material fact concerning whether the officials used excessive force. After careful review, we affirm.

We review de novo the district court's decision on a motion for summary judgment. Terrell v. Smith, 668 F.3d 1244, 1249–50 (11th Cir. 2012). Summary judgment is appropriate when “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). “[G]enuine disputes of facts are those in which the evidence is such that a reasonable jury could return a verdict for the non-movant.” Mann v. Taser Int'l, Inc., 588 F.3d 1291, 1303 (11th Cir. 2009) (quotation omitted). “For factual

issues to be considered genuine, they must have a real basis in the record.” Id. (quotation omitted). “[M]ere conclusions and unsupported factual allegations are legally insufficient to defeat a summary judgment motion.” Ellis v. England, 432 F.3d 1321, 1326 (11th Cir. 2005). Ordinarily, we view the facts in the light most favorable to the nonmoving party, but “[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.” Scott v. Harris, 550 U.S. 372, 380 (2007). Accordingly, when uncontested video evidence is available, we must view the facts in the light depicted by the video recording. Id. at 380–81.

The relevant background -- based on the summary judgment record, which included a handheld video recording of the entire incident -- is this. On October 6, 2017, Butler, a Florida state prisoner, requested a “psychological emergency,” was placed in a shower cell, and spoke to a doctor. After Butler spoke to the doctor, a security officer ordered him to submit to handcuffs. Butler refused and requested officers to inventory his property in the cell. Captain William Blitch approached Butler and ordered him to submit to handcuffs for relocation to the medical clinic for placement on self-harm observation status (“SHOS”). Butler again refused.

Blitch left and returned with a cell extraction team. In an incident report describing the extraction, Blitch noted that the prison warden had authorized the cell

extraction, and that Blitch had ordered the cell extraction team members to “utilize the minimal amount of force necessary to bring [Butler] into compliance with lawful commands.” The video recording shows Blitch giving an introductory statement and five members of the team introducing themselves and explaining their responsibilities, including Sergeant Matthew Butler,<sup>1</sup> Sergeant Raymond Lee, and Sergeant Teddy Tomlin, the three other defendants in this appeal.

At that point, Captain Blitch again ordered Butler to submit to hand restraints, told Butler that his failure to submit would result in the cell extraction team being used, and asked if Butler understood his orders. Nevertheless, Butler repeatedly refused to allow himself to be handcuffed, lunged at the officers when they opened the shower cell door, and hung onto an officer’s shield and the cell bars. The officers repeatedly ordered Butler to “stop resisting” and put his hands behind his back, but he continued to refuse as the officers attempted to restrain him. At one point, Sergeant Tomlin, who was holding a pair of handcuffs, started using “distractionary” punches on Butler to get him to let go of the cell bars. About ten seconds later, members of the extraction team moved Butler to the back of the cell, and Sergeant Butler remembered “inadvertently tripp[ing] over the shower curb, causing [Butler]

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<sup>1</sup> Because the plaintiff and one of the defendants share the same last name, we only refer to the latter as “Sergeant Butler.”

to strike his head against the shower wall and floor.” The officers again ordered Butler to comply and struck him in order to apply restraints.

The video shows that the extraction team members struggled with Butler for about thirty seconds, until one of them announced that they had secured Butler in handcuffs. The team members then put leg restraints on Butler and helped him stand up and walk out of the cell. Once they applied restraints, the officers stopped using any force. The entire incident from the time the extraction team opened the cell door to the time Butler was being assisted to his feet lasted approximately ninety seconds.

When Butler left the cell, he had a visible bleeding abrasion on his head, with spots of blood on his upper body. The officers took him to a medical exam room, but he refused treatment, saying “I don’t want to be touched,” and prison officials were unable to assess the size of the abrasion on his forehead. Butler later alleged that he asked the prison officials to take photos of his injuries, but they refused. Butler was then taken to a shower cell, strip searched, given a change of clothes, and placed in SHOS housing.

Butler claimed that during the cell extraction, he received gashes, lacerations, permanent scarring to his head, black eyes, a loose tooth, and numerous bruises and abrasions to his left arm. He also claimed to have lost a lot of blood. However, the officials submitted a declaration from Dr. Timothy Whalen at the Florida Department of Corrections, who said that the abrasion Butler suffered was not

serious and that Butler did not mention a black eye or loose tooth at the initial evaluation or subsequent SHOS stay. On October 16, 2017, Butler submitted a request to see a doctor, and this evaluation took place on October 31. That doctor reported that although Butler had “multiple complaints,” the examination indicated that there were “no obvious sequelae of any injuries sustained on Oct 6 ’17 incident.”

On February 26, 2018, Butler filed this § 1983 complaint, alleging that Sergeants Tomlin, Lee, and Butler used excessive force in violation of the Eighth Amendment, and that Captain Blitch failed to intervene to prevent the use of excessive force.<sup>2</sup> The district court granted summary judgment in favor of the prison officials, finding that the “undisputed evidence establishes that Defendants were justified in using force to accomplish a legitimate security interest, i.e., to obtain [Butler’s] compliance with the order to submit to hand restraints, and that, at worst, [Butler] received minimal injuries consistent with the amount of force which was necessary to restrain him.” This appeal followed.

In an Eighth Amendment excessive force case, the core inquiry is “whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” Wilkins v. Gaddy, 559 U.S. 34, 37

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<sup>2</sup> Butler also named Florida Department of Corrections Secretary Julie Jones as a defendant. In its initial screening pursuant to the Prison Litigation Reform Act, the district court dismissed her from the complaint for two reasons: she was entitled to official immunity and Butler failed to state a claim for relief against her. Butler does not appeal her dismissal from the case.

(2010) (quotation omitted). To determine whether force was applied maliciously and sadistically to cause harm, we consider “the need for the application of force, the relationship between the need and the amount of force that was used, and the extent of the injury inflicted” upon the prisoner. Whitley v. Albers, 475 U.S. 312, 321 (1986) (quotations omitted, alterations accepted). Additionally, courts look at “the extent of the threat to the safety of staff and inmates, as reasonably perceived by the responsible officials on the basis of the facts known to them, and any efforts made to temper the severity of a forceful response.” Id. An officer’s immediate offer of medical assistance demonstrates an effort to temper the severity of the response. Cockrell v. Sparks, 510 F.3d 1307, 1312 (11th Cir. 2007). Moreover, we must give a “wide range of deference to prison officials acting to preserve discipline and security, including when considering decisions made at the scene of a disturbance.” Id. at 1311 (quotations omitted, alterations accepted). In sum, a prisoner may avoid summary judgment “only if the evidence viewed in the light most favorable to him goes beyond a mere dispute over the reasonableness of the force used and will support a reliable inference of wantonness in the infliction of pain.” Brown v. Smith, 813 F.2d 1187, 1188 (11th Cir. 1987) (per curiam).

Here, the district court did not err in concluding that Butler failed to establish, on the summary judgment record in this case, a violation of his Eighth Amendment right to be free from the excessive use of force. For starters, the video and the

parties' evidence reveal no genuine issue of material fact concerning whether the officers' force was applied in a good-faith effort to maintain or restore discipline. Indeed, it is undisputed that the officers used force for the purpose of transporting Butler to SHOS housing for his psychological emergency. See Cockrell, 510 F.3d at 1312 ("That the minimal force was used to quiet Cockrell to care for another inmate in need of medical attention, instead of for some other reason, . . . weighs against a finding of excessive force.").

Further, Butler refused multiple orders to submit to hand restraints for the relocation. When the extraction team arrived at Butler's cell, Blitch warned Butler that his failure to follow orders would result in the deployment of the cell extraction team. Then, when Blitch opened the cell door, Butler lunged forward. The officers told Butler to stop resisting and put his hands behind his back multiple times, but Butler did not comply. Only then did Sergeant Tomlin start using "distractionary" punches, and during these punches, Blitch ordered Butler to "let go of the shield." In the video recording, the punches appear small and targeted, in an effort to get Butler to comply with the officers' orders.

Once Butler and the extraction team members moved to the back of the cell, the video does not clearly show what happened, and Butler says that Sergeants Butler and Lee hit him in the face. However, during that 40-second or so time period, the officers can be heard again ordering Butler to comply, and the video shows them

attempting to secure him in handcuffs. As the district court put it, “[d]espite being in a chaotic situation in a confined space, the video depicts the extraction team as relatively calm and professional while attempting to fully restrain [Butler].” After the officers handcuffed Butler, they did not use any more force. See Mobley v. Palm Beach Cty. Sheriff Dep’t, 783 F.3d 1347, 1356 (11th Cir. 2015) (finding no excessive force where “the officers did not apply any force after [the plaintiff] finally surrendered his hands to be cuffed,” and distinguishing cases like Lee v. Ferraro, 284 F.3d 1188, 1198 (11th Cir. 2002), where force was applied after “the plaintiff was already arrested and in handcuffs”). The officers also videotaped the entire cell extraction and its aftermath.<sup>3</sup> And, importantly, the officers immediately took Butler to receive a medical examination after the incident. See Cockrell, 510 F.3d at 1312. In short, there is no genuine dispute of fact concerning whether the officers were justified in using force or whether they used only the amount of force necessary to handcuff Butler. The record simply does not support an inference of wantonness in the infliction of pain. See Scott, 550 U.S. at 380; Brown, 813 F.2d at 1188.

The district court also did not err in finding that, “at worst, [Butler] received minimal injuries consistent with the amount of force which was necessary to restrain him.” Although Butler alleges that he sustained injuries in addition to the head

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<sup>3</sup> Butler notes that in some parts of the video, he cannot be seen, and his voice is inaudible. However, the video still documents the entire incident.

abrasion and that the head abrasion was serious, he refused immediate medical attention after the cell extraction and the nurse documented the only visible injury - - a forehead abrasion. The video shows that Butler had spots of blood on his face, arm, shirt, and hands, but it also reveals that he was able to walk to the medical exam room and later change his clothes without difficulty. Dr. Whalen added that during Butler's SHOS stay, the abrasion on his head "was noted to be midline and superficial," and Butler did not mention other injuries. Moreover, Butler did not request medical attention until ten days after the cell extraction incident. At that evaluation, the doctor recognized Butler's complaints but found no obvious consequences of any injuries from the cell extraction, and no treatment was warranted. Accordingly, Butler has not created a genuine dispute of material fact about the extent of his injury such that this factor would favor a finding of excessive force. See Wilkins, 559 U.S. at 38 ("Injury and force . . . are only imperfectly correlated, and it is the latter that ultimately counts.").

Accordingly, the district court did not err in granting summary judgment to the prison officials because no reasonable jury could find that they violated his Eighth Amendment rights, and we affirm.<sup>4</sup>

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<sup>4</sup> Because the officers did not use excessive force, Butler also cannot maintain a failure-to-intervene claim against Blitch. See Alston v. Swarbrick, 954 F.3d 1312, 1321 (11th Cir. 2020) ("An officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer's use of excessive force can be liable for failing to intervene, so long as he was in a position to intervene yet failed to do so." (quotations omitted)).

**AFFIRMED.**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

DARRELL WAYNE BUTLER,

Plaintiff,

v.

Case No. 3:18-cv-293-J-32JRK

WILLIAM B. BLITCH, et al.,

Defendants.

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ORDER

*I. Status*

Plaintiff, an inmate of the Florida penal system, is proceeding on a pro se Civil Rights Complaint (Doc. 1) raising claims of excessive force and failure to intervene against Defendants Blitch, Butler, Lee, and Tomlin. Before the Court is Defendants' Motion for Summary Judgment (Doc. 59). In support of their Motion, Defendants submitted a transcript of Plaintiff's deposition (Doc. 59-1), a use of force packet (Doc. 59-2), a handheld video of the cell extraction, an audio clip of Plaintiff's, Sergeant Wesley Rogers', and Sergeant Austin Merritt's interviews with the Inspector General,<sup>1</sup> and the Declaration of Dr. Timothy Whalen (Doc. 59-4). Plaintiff was advised of the provisions of Federal Rule of

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<sup>1</sup> Sergeant Rogers and Sergeant Merritt were part of the cell extraction team. They are not, however, named as defendants in this case.

Civil Procedure 56, as well as that the granting of a motion for summary judgment would result in the termination of this case. See Order (Doc. 8). Plaintiff filed a Brief in Opposition (Doc. 76) with exhibits, including his Declaration (Doc. 76-1), Statement of Disputed Facts (Doc. 76-2), some discovery documents and Court filings, his deposition, the incident report, and some medical and mental health records.

## *II. Parties' Positions*

Plaintiff alleges as follows in the Complaint:

On October 6, 2017 at about 5:45 PM[,] defendant Blitch approached the plaintiff in front of the shower on the 1100 side of I-Wing. At which time defendant Blitch ordered plaintiff to submit to hand restraints for re-location to the medical clinic for placement on "SHOS"<sup>[2]</sup> status.<sup>3</sup>

Plaintiff Butler then advised defendant Blitch he would submit to handcuffs immediately following his personal property being procedurally inventoried in the plaintiff[s] presence[ p]rior to being separated from such. Defendant Blitch refused to honor the plaintiff[s] advisement.

Defendant Blitch left and reappeared with a "Cell Extraction Team," opened the shower door and stood outside the shower and allowed and permitted his subordinates to utilize improper excessive physical, malicious and sadistic force to deliberately

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<sup>2</sup> Self Harm Observation Status.

<sup>3</sup> Plaintiff had previously declared a psychological emergency and upon a doctor's order, he was being placed on SHOS status. See Doc. 59-1 at 4-5.

cause pain, serious harm, and extensive injury to the plaintiff.

During such unprovoked assault[,] defendant Blitch eye-witnessed [and] he failed to cease his insubordinates from illegally beating the plaintiff with handcuffs and naked fist to which the plaintiff sustained large gashes, lacerations, permanent scarring to the face, scalp, etc. and numerous bruises and abrasions to his left arm.

Doc. 1 at 8-9 (paragraph enumeration omitted). Plaintiff then details the acts of each Defendant who was a member of the cell extraction team.

On October 6, 2017 defendant Tomlin spoke death threats of how he was going to beat the [plaintiff] prior to dressing up in riot gear. When defendant Tomlin entered the shower dressed in riot gear on the 1100 side he first began beating the plaintiff's left hand and wrist with steel handcuffs. After the defendant Tomlin gained his way inside the shower[,] he immediately started brutally beating the plaintiff in the face, scalp, with iron handcuffs which caused the plaintiff to sustain large gashes, and lacerations and the loss[s] of much essence of life (blood).

On October 6, 2017 defendant R. Lee entered into the 1100 side shower wearing riot gear. Once he entered the shower[,] he started beating the plaintiff in the face with his naked fist which caused the plaintiff to sustain a loose tooth and a large gash to the right side of the plaintiff's right eye.

On October 6, 2017 defendant Butler was the lead officer wearing riot gear and holding a large shield. Defendant Butler applied physical pressure to gain entry inside the 1100 side shower[. Once he made his way into the shower,] he and the plaintiff ended up on top of the tile wall and the plaintiff

observed the defendant Butler taking a punch at the plaintiff[s] facial area with his naked fist. The defendant[s] actions caused the plaintiff to sustain a blackeye.

On October 6, 2017 after the use of force occurred[,] Defendants Blitch, Tomlin, R. Lee, and Sgt. Butler all escorted the plaintiff out of I-Wing[, and] down the corridor into the clinic for treatment to which the plaintiff refused treatment due to trauma, but requested for photos of his injuries and appearance. But the staff in medical and security denied the plaintiff[s] request.

Thereafter, the defendants then escorted the plaintiff into the shower area inside the clinic and strip[] searched the plaintiff then placed the plaintiff into "SHOS" cell A-1102.

Id. at 9-10. As relief, he seeks declaratory, injunctive, and monetary relief. Id. at 11.

In their Motion for Summary Judgment, Defendants argue that they are entitled to qualified immunity because they were performing discretionary functions, they did not violate Plaintiff's constitutional rights, and Plaintiff has failed to demonstrate a physical injury sufficient to state a claim for compensatory or punitive damages. See Doc. 59. Defendants contend that "Plaintiff refused a lawful command to submit to hand restraints," the cell "extraction team was called," and they used force to obtain Plaintiff's compliance with a lawful command. Id. at 5. In the Report of Force Used and Incident Reports, Defendant Blitch; each cell extraction team member,

including all Defendants; and others provided a narrative summary of what occurred. See Doc. 59-2 at 1-3, 8-17. The narratives are largely the same.

Defendant Blitch was the shift supervisor during the cell extraction. His comment on the Incident Report reads as follows:

Organized physical force was utilized on [Plaintiff] due to [Plaintiff] refusing to submit to handcuffing procedures to carry out the orders of Dr. George Emanoilidis. Dr. G. Emanoilidis ordered for [Plaintiff] to be placed on SHOS Status due to his suicidal gestures. At approximately 5:26PM, LPN K. Burgin utilized her Crisis Intervention Techniques to bring [Plaintiff] into compliance with a lawful command, to no avail. At approximately 5:31 PM, Warden Barry Reddish was contacted and authorized the use of forced cell extraction team to carry out Dr. G. Ema[n]oilidis['] orders as written to bring [Plaintiff] into compliance with a lawful command. Camera Operator #1, Officer Patrick Moore, commenced filming at approximately 5:43PM. At this time, I conducted a self-introduction and opening statement. The forced cell extraction team conducted an introduction; video recording was continuous until the conclusion of the incident. I ordered the team members to utilize the minimal amount of force necessary to bring [Plaintiff] into compliance with lawful commands. At approximately 5:45PM, I ordered [Plaintiff] to submit to handcuffing procedures or the forced cell extraction team would be utilized to bring him into compliance, to no avail. At approximately 5:46pm, I unlocked and opened the shower stall door and [Plaintiff] lunged towards the shower bars causing the protective shield to strike [Plaintiff] in the facial area. [Plaintiff] then grasped the shower bars refusing to place his hands behind his back, so hand restraints could be applied. Sergeant Tomlin then delivered several distractionary blows to [Plaintiff's] forearms causing [Plaintiff] to relinquish his grasp of the

shower bars. Sergeant Butler and Sergeant Merritt then forced [Plaintiff] to the back of the shower and inadvertently tripped over the shower curb causing [Plaintiff] to strike his head on the back shower wall and the shower floor. [Plaintiff] continued to provide resistance refusing to submit to handcuffing procedures. Sergeant Merritt was able to apply the right hand restraint. [Plaintiff] continued to provide resistance by grasping his state issue[d] blue shirt with his left hand refusing all orders to submit to hand restraints. At this time, Sergeant Merritt delivered one closed fist strike to [Plaintiff's] upper left forearm causing [Plaintiff] to relinquish his grasp of his state issued blue shirt so the hand restraints could be applied. At approximately 5:47 PM, the team members were able to apply the remaining restraints [and] all force ceased. [Plaintiff] was assisted to his feet. Upon arriving on the second floor of I-Wing, the waist chain, black box and red lock were applied. At approximately 5:52PM, [Plaintiff] refused a post use of force physical but was visually assessed by RN[] A. Turbyfill with the following injuries: abrasion to the forehead. [Plaintiff] received a clean SHOS Shroud and was re-housed in cell A-1101s, on SHOS status. I conducted a closing statement and Camera Operator #1 ceased filming. During the filming, [Plaintiff] alleged that staff used excessive force during this incident which is refuted d[ue] to this incident being captured on handheld camera[. A]t no time was there any wrong doing by staff. All staff received post use of force physicals with no injuries noted. At approximately 6:20PM, Warden Barry Reddish[] was notified of the amount of force utilized. At approximately 6:26PM, EAC Duty Officer Angel was contacted and issued EAC#2017-10-28078. [Plaintiff] received (2) two Disciplinary reports for "6-1" "Disobeying a verbal order" written by Sergeant William Fishley and myself. [Plaintiff's] property was inventoried by Sergeant Fishley and Officer Sean Hanson and secured in the property room. A (DC6-220) "Inmate Impound of Personal property" and A (DC6-163) "Close management privilege suspension"

was completed. Camera Operator #1, Officer P. Moore, downloaded the recording to DVD#A-5473. Officer P. Moore completed a DC1-801 and placed it, along with the DVD, in the video recording drop box. Forward to Chief of Security.

Id. at 8-9.

According to Defendant Butler, who was the #1 team member who entered the shower cell holding the shield, when the cell door was opened, Plaintiff “lunged towards the shower bars causing the protective shield to strike [Plaintiff] in the facial area, [and Plaintiff] then grasped the shower bars with both hands.” Id. at 1. Defendant Butler continues:

I relinquished the protective shield and grasped [Plaintiff] around the torso with both arms while clasping my hands and pulled [him] to the back of the shower cell in an attempt to break [his] grasp, to no avail. Sergeant Teddy Tomlin then delivered several distractionary blows to [Plaintiff’s] forearms, breaking [Plaintiff’s] grasp. At this time, with the assistance of Sergeant Austin Merritt we forced [Plaintiff] to the back of the shower stall. Upon forcing [Plaintiff] to the back of the shower I inadvertently tripped over the shower curb, causing [Plaintiff] to strike his head against the shower wall and floor. I maintained my hold of [Plaintiff] until all restraints were applied. Once all restraints were applied all force ceased.

Doc. 59-2 at 1.

Defendant Tomlin, who was the #2 team member, stated that when he was delivering the “distractionary blows” to Plaintiff’s forearms, he “inadvertently had the hand restraints in [his] closed fist but never made

contact with the hand restraints to [Plaintiff's] forearms." Id. at 3. Sergeant Merritt, the #3 team member, who is not a defendant in this case, stated that after Defendant Butler and Plaintiff "inadvertently tripped over the shower curb," Plaintiff "continued to provide resistance." Id. At that time, Sergeant Merritt, "grasped [Plaintiff] by the right arm and was able to apply the right hand restraint. [Plaintiff] then grasped his state issued blue shirt with his right hand and refused all orders to relinquish his grasp so the restraint could be applied." Id. Sergeant Merritt then "struck [Plaintiff] in the upper left forearm causing [him] to relinquish his grasp." Id. Defendant Lee, the #5 team member, stated that after Defendant Butler and Plaintiff "inadvertently tripped over the shower curb," he "grasped [Plaintiff] by the lower extremities and assisted Sergeant Wesley Rogers in applying the leg restraints." Id. Defendant Lee "repositioned [his] grasp and assisted Sergeant Butler in pinning [Plaintiff] to the shower stall floor. [Plaintiff] continued to provide resistance by grasping his state issued blue shirt refusing all orders to submit to hand restraints." Id. All Defendants agree that once all restraints were applied, all force ceased. Id. at 1, 3.

A handheld video captured the entire cell extraction. The video begins with Defendant Blitch giving an introductory statement and the cell extraction team members introducing themselves and explaining their duties upon

entering the cell.<sup>4</sup> Each team member stated he was trained in forced cell extractions. Defendant Blitch advises the team members to use the minimal amount of force necessary. The cell extraction team then calmly walks in an organized fashion to the shower cell where Plaintiff is located.

At about the 2:55 minute mark on the video, Defendant Blitch gives Plaintiff a final order to submit to hand restraints and be housed on SHOS, and Defendant Blitch advises Plaintiff that his failure to do so will result in the cell extraction team being utilized. Plaintiff is standing right at the cell door, but he does not put his hands through the slot to be handcuffed. He says something but it cannot be heard on the video.

At about the 3:06 minute mark, the cell door is opened and Plaintiff clearly charges the cell extraction team member holding the shield (Defendant Butler). Plaintiff is ordered to "stop resisting" while the cell extraction team members attempt to force Plaintiff back into the cell by pushing on each other. Although Plaintiff cannot be seen, it is obvious from the Defendants' positions and body movements that Plaintiff is actively pushing against them. Defendant

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<sup>4</sup> Defendant Butler is the #1 person on the cell extraction team. His duties included using the shield to pin the inmate to the wall or floor until restraints could be applied. Defendant Tomlin is the #2 team member, and his responsibilities, along with the #3 team member who is not a defendant, included Plaintiff's upper extremities and applying hand restraints. Defendant Lee is the #5 person. His responsibilities, along with the #4 team member who is not a defendant, included Plaintiff's lower extremities.

Blitch ordered the team to push Plaintiff back into the cell and to get the shield out. Plaintiff is ordered multiple times to stop resisting and to put his hands behind his back.

Starting around the 3:40 minute mark, Plaintiff is given several warnings to stop resisting and to let go of the shield. A cell extraction team member (Defendant Tomlin) can be seen using distractionary punches to get Plaintiff to release his grasp.<sup>5</sup> While using the distractionary punches, Defendant Tomlin has a pair of handcuffs in his hand. About 7 seconds later (3:47 minute mark), Plaintiff and some members of the cell extraction team move from the front corner of the cell to the floor on the opposite back side of the cell, and around the 3:50 minute mark, the shield is taken out of the cell. Plaintiff is given multiple orders to stop resisting and give the officers his hand, and one of the team members announced that handcuffs were on at about the 4:25 minute mark. Less than 10 seconds later, the leg irons were on and Plaintiff is assisted to his feet. The entire incident from the time the cell door was opened to the time Plaintiff was being assisted to his feet was approximately 1 minute and 29 seconds.

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<sup>5</sup> Plaintiff acknowledges that he was holding onto the shower cell bars, although this cannot be seen on the video. Defendant Blitch was ordering Plaintiff to let go of the shield at this time, but Defendant Blitch was not inside the cell.

When Plaintiff exits the cell, he has blood on his head, face, arms, and hands. Plaintiff is escorted to medical where he refused treatment. He was then taken to a shower cell, strip searched, given a change of clothes, and placed in SHOS housing.

Defendants submitted the Declaration of Dr. Whalen, a medical doctor employed by the Department, who averred that he reviewed Plaintiff's medical records. Doc. 59-4 at 1. He asserts that the abrasion Plaintiff received on his forehead "was noted to be midline and superficial in the subsequent SHOS stay. There was no mention of a black eye at the initial evaluation or the subsequent SHOS stay[, and a]t no time was there any mention of a loose or broken tooth." Id. at 1-2. On October 31, 2017, Plaintiff was seen by Dr. G. Espino. See Doc. 76-6 at 6. Plaintiff had "multiple complaints" but upon examination, Dr. Espino indicated that there was "no obvious sequelae of any injuries sustained on Oct 6 '17 incident" and no treatment was warranted. Id.

### *III. Standard of Review*

"Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Hinkle v. Midland Credit Mgmt., Inc., 827 F.3d 1295, 1300 (11th Cir. 2016) (quoting Jurich v. Compass Marine, Inc., 764 F.3d 1302, 1304 (11th Cir. 2014)); see Fed. R. Civ. P. 56(a). "A genuine issue of material fact exists when the evidence is such that a reasonable jury could return a verdict for the

nonmoving party.” Bowen v. Manheim Remarketing, Inc., 882 F.3d 1358, 1362 (11th Cir. 2018) (quotations and citation omitted); see Hornsby-Culpepper v. Ware, 906 F.3d 1302, 1311 (11th Cir. 2018) (“Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial.” (quotations and citation omitted)). In considering a summary judgment motion, the Court views “the evidence and all reasonable inferences drawn from it in the light most favorable to the nonmoving party.” Hornsby-Culpepper, 906 F.3d at 1311 (quotations and citation omitted).

“[W]hen the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts.” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986) (footnote and citation omitted); see Winborn v. Supreme Beverage Co. Inc., 572 F. App’x 672, 674 (11th Cir. 2014) (per curiam) (“If the movant satisfies the burden of production showing that there is no genuine issue of fact, ‘the nonmoving party must present evidence beyond the pleadings showing that a reasonable jury could find in its favor.’” (quoting Shiver v. Chertoff, 549 F.3d 1342, 1343 (11th Cir. 2008)). “A ‘mere scintilla’ of evidence supporting the opposing party’s position will not suffice; there must be enough of a showing that the jury could reasonably find for that party.” Loren v. Sasser, 309 F.3d 1296, 1302 (11th Cir. 2002) (quoting Walker v. Darby, 911 F.2d 1573, 1577 (11th Cir. 1990) (internal quotations omitted)).

Moreover, “[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.” Scott v. Harris, 550 U.S. 372, 380 (2007). In cases involving video evidence, the Court will accept the video’s depiction of the events if the video “obviously contradicts” the opposing party’s version of events. See Pourmoghani-Esfahani v. Gee, 625 F.3d 1313, 1315 (11th Cir. 2010); see also Morton v. Kirkwood, 707 F.3d 1276, 1284 (11th Cir. 2013) (recognizing that “where an accurate video recording completely and clearly contradicts a party’s testimony, that testimony becomes incredible”). “But where the recording does not clearly depict an event or action, and there is evidence going both ways on it, we take the [the non-movant’s] version of what happened.” Shaw v. City of Selma, 884 F.3d 1093, 1097 n.1 (11th Cir. 2018).

#### ***IV. Discussion***

The Eighth Amendment prohibits the infliction of cruel and unusual punishment. U.S. Const. amend. VIII. “[T]he core judicial inquiry is . . . whether force was applied in a good faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” Hudson v. McMillian, 503 U.S. 1, 7 (1992). “If force is used ‘maliciously and sadistically for the very purpose of causing harm,’ then it necessarily shocks the conscience.” Cockrell v. Sparks, 510 F.3d 1307, 1311 (11th Cir. 2007) (per curiam) (quoting Brown v. Smith, 813

F.2d 1187, 1188 (11th Cir. 1987)). Courts consider the following factors when analyzing whether force was used maliciously and sadistically:

(1) “the extent of injury”; (2) “the need for application of force”; (3) “the relationship between that need and the amount of force used”; (4) “any efforts made to temper the severity of a forceful response”; and (5) “the extent of the threat to the safety of staff and inmates, as reasonably perceived by the responsible officials on the basis of facts known to them.”

Campbell v. Sikes, 169 F.3d 1353, 1375 (11th Cir. 1999) (quoting Whitley v. Albers, 475 U.S. 312, 321 (1986)). “When considering these factors, [courts] ‘give a wide range of deference to prison officials acting to preserve discipline and security, including when considering decisions made at the scene of a disturbance.’” Fennell v. Gilstrap, 559 F.3d 1212, 1217 (11th Cir. 2009) (per curiam) (quoting Cockrell, 510 F.3d at 1311).

“The Eighth Amendment’s prohibition of cruel and unusual punishments necessarily excludes from constitutional recognition de minimis uses of physical force, provided that the use of force is not of a sort repugnant to the conscience of mankind.” Hudson, 503 U.S. at 9-10 (internal quotations and citations omitted). Indeed, not “every malevolent touch by a prison guard gives rise to a federal cause of action.” Id. at 9 (citation omitted). “While a lack of serious injury is relevant to the inquiry, [i]njury and force . . . are only imperfectly correlated and it is the latter that ultimately counts.” Smith v. Sec’y, Dep’t of Corr., 524

F. App'x 511, 513 (11th Cir. 2013) (quoting Wilkins v. Gaddy, 559 U.S. 34, 38 (2010)). “A prisoner may avoid summary judgment, ‘only if the evidence viewed in the light most favorable to him goes beyond a mere dispute over the reasonableness of the force used and will support a reliable inference of wantonness in the infliction of pain.’” Stallworth v. Tyson, 578 F. App'x 948, 953 (11th Cir. 2014) (quoting Brown, 813 F.2d at 1188).

✓ Plaintiff acknowledges that he refused to submit to hand restraints, because he first wanted his personal property to be inventoried in his presence. Staff attempted to gain Plaintiff's compliance before using any kind of forceful response. At deposition, Plaintiff testified that “security came down . . . and he ordered me to cuff up.” Doc. 59-1 at 2. Plaintiff made a request to Captain McCray that his property be inventoried, but his request was “disregarded.” Id. Defendant Blitch then came and ordered Plaintiff to cuff up, but Plaintiff refused. Id.; Doc. 1 at 8. Plaintiff further acknowledges that Defendant Blitch left, and when he returned, the cell extraction team was with him. Doc. 59-1 at 2; Doc. 1 at 8. Before approaching Plaintiff's cell, at a minimum, Defendants knew that Plaintiff was refusing to submit to hand restraints to be placed on SHOS per a doctor's order and refusing housing.

The video shows Defendant Blitch giving Plaintiff another opportunity to submit to hand restraints, but Plaintiff again refused. Plaintiff's own actions necessitated a need for force. Plaintiff appeared calm when the cell extraction

team approached, however, the video shows that as soon as the cell door opened, Plaintiff charged the team members. Plaintiff acknowledged during his interview with the Inspector General's Office and in his deposition that he was holding onto the shower bars and Defendant Tomlin used distractionary punches "to get [him] to release [his] hand from the bars." Doc. 59-1 at 5.<sup>6</sup>

There is no dispute that Defendant Tomlin used distractionary punches to gain Plaintiff's compliance and that while he did so, he had handcuffs in his hand. These punches do not appear on the video to be intended to deliver harm. Sergeant Merritt also acknowledges using one fist strike to Plaintiff's left arm to force Plaintiff to release his grasp on his clothing so Sergeant Merritt could place the handcuffs on his one hand. Despite being in a chaotic situation in a confined space, the video depicts the extraction team as relatively calm and professional while attempting to fully restrain Plaintiff. Once it was announced that handcuffs and leg irons were on, all force ceased and Plaintiff was assisted to his feet. The entire incident lasted about 1 minute and 29 seconds.

Prison officials followed good practice and videotaped the entire cell extraction and the aftermath. While the handheld video does not show every move made by each Defendant or by Plaintiff, it documents the scenario

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<sup>6</sup> Plaintiff claims that he was holding onto the shower bars because before the team entered the cell, Defendant Tomlin was threatening him. Doc. 59-1 at 2-3, 5; see Doc. 1 at 9.

sufficiently to give an objective view of what happened and “obviously contradicts” Plaintiff’s version of events. Pourmoghani-Esfahani, 625 F.3d at 1315.<sup>7</sup>

Plaintiff alleges that he had the following injuries: “numerous bruises and abrasions to his left arm”; “large gashes[] and lacerations”; “los[s] of much essence of life (blood)”; “permanent scarring to the face, scalp, etc.”; “a loose tooth and a large gash to the right side of [his] eye”; and a “blackeye.” Doc. 1 at 9-10. However, immediately after the use of force, Plaintiff was taken directly to the medical unit where he refused to be examined or treated by the medical staff, so the nurse could only document the injury she could readily see: an abrasion on Plaintiff’s forehead. Doc. 59-2 at 4-5. Plaintiff obviously has some injury in light of the blood, but the video does not depict the location of the injury. The video shows blood on Plaintiff’s head, face, right arm, and hands, but also shows him walking, including up a flight of stairs and down a long hallway, to the medical unit after the use of force and getting undressed and dressed without difficulty.

Plaintiff did not request any medical attention until ten days after the incident, when, on October 16, 2017, Plaintiff submitted a sick-call request stating that he “sustained multiple gashes to the forehead, right side of eye, and

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<sup>7</sup> The location of the video camera was necessitated by the situation. It is not practical to expect the video camera could have been located inside the cell.

top of the head," which were causing "dizz[i]ness, blurred vision, [and] excessive headch[e]s." Doc. 76-6 at 8 (some capitalization omitted). On October 31, 2017, Dr. Espino examined Plaintiff and found that there were no obvious consequences of any injury sustained on October 6, 2017, and that no treatment was warranted. See Doc. 76-6 at 6.

Defendants are entitled to summary judgment in their favor. The undisputed evidence establishes that Defendants were justified in using force to accomplish a legitimate security interest, i.e., to obtain Plaintiff's compliance with the order to submit to hand restraints, and that, at worst, Plaintiff received minimal injuries consistent with the amount of force which was necessary to restrain him. Defendants were forced to react to Plaintiff's initial physical attack, and they were required to make split-second decisions to complete their mission: to gain Plaintiff's compliance using the minimal amount of force necessary. Defendants could not predict when, or if, Plaintiff would become compliant, and even if Plaintiff stopped resisting, staff was still required to maintain control of the situation in case Plaintiff decided to become aggressive and/or resistant again. They did this in a confined space, yet they executed their set protocol in a structured manner and used a reasonable amount of force given the threat with which they were faced.

"Although [the Court] cannot pinpoint with precision the amount of force used by [Defendants], the fact that there was no more than minimal injury, that

some amount of force was justified under the circumstances, and that the force was used for a legitimate security purpose persuades [the Court] that the evidence in this case raises only a 'mere dispute over the reasonableness of the particular use of force' and could not support 'a reliable inference of wantonness in the infliction of pain.'" Brown, 813 F.2d at 1189-90 (quoting Whitley, 475 U.S. at 322). Viewing the record in the light most favorable to Plaintiff shows that no reasonable jury could find that Defendants violated his Eighth Amendment rights. Therefore, the Court will grant summary judgment in Defendants' favor.<sup>8</sup> Accordingly, it is

**ORDERED:**

1. Defendants' Motion for Summary Judgment (Doc. 59) is **GRANTED**. The Clerk shall enter judgment in favor of Defendants and against Plaintiff.
2. Plaintiff's Motion for Sanctions (Doc. 79) and Motion to Enforce Sanctions (Doc. 84) are **DENIED**. Plaintiff seeks the imposition of sanctions against Defendants for failing to preserve and/or produce certain evidence, including fixed wing video evidence, the handcuffs Defendant Tomlin used "as brass knuckles when he utilized distractionary blows upon the Plaintiff," and

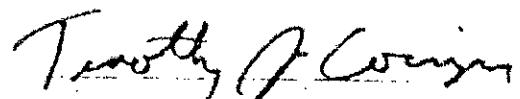
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<sup>8</sup> Given that no excessive force was used, Plaintiff cannot maintain a failure to intervene claim against Defendant Blitch.

the clothing and bedding he wore while on SHOS status from October 6-11, 2017. The Court has reviewed the Motions and Defendants' Responses (Docs. 83, 85) and finds no basis for granting the relief requested.

3. The Clerk shall terminate any pending motions and close the file.

**DONE AND ORDERED** at Jacksonville, Florida, this 5<sup>th</sup> day of March, 2020.



TIMOTHY J. CORRIGAN  
United States District Judge

JAX-3 3/5

c:

Darrell Wayne Butler, #419331  
Counsel of Record