APPENDIX

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APPENDIX A

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 21-3809

[Filed: June 15, 2022]

LARRY TAWNEY, JR.,	)
	)
Plaintiff-Appellant,	)
	)
v.	)
	)
PORTAGE COUNTY, OHIO; BILL BURNS, DAVID W. DOAK, DOUG DRAKE, MATT HOLBROOK, JOHN HOSTLER, JASON JOY, DALE KELLY, SHAWN LANSINGER, VINCENT T. LOMBARDO, DEREK MCCOY, BRYAN MORGANSTERN, ERIC NOELL, JUSTIN SCHIFKO, MIKE SKILTON, DAN SMITH, CAMERON STOCKLEY, ROBERT SYMSEK, BARRY THRUSH, CHAY VUE, AUSTIN WILSON, JANICE CLARK, CIRCE HARTMAN, ERICA	)

JARVIS, CLAUDETTE MCCULLOUGH, and SUSANNE SATTLER, in their official and individual capacities,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

OPINION

Before: MOORE, STRANCH, and LARSEN, Circuit Judges.

JANE B. STRANCH, Circuit Judge. Larry Tawney, Jr. alleges that several correctional officers or sheriff's deputies viciously assaulted him while he was detained in the Portage County Jail. He sued the county, the county sheriff, and twenty-three correctional officers and deputies who he alleges may have either been involved in or failed to stop the attack. Tawney brought claims under 42 U.S.C. § 1983 for violations of his Eighth Amendment rights against various combinations of the defendants, a *Monell* claim against the county, and a state law claim for intentional infliction of emotional distress against the individual defendants. On the defendants' summary judgment motion, the district court found that video and photographic evidence from the night of and morning after the alleged beating squarely contradicted Tawney's version of events. Explaining that no reasonable jury could conclude that the attack occurred, the district court granted summary judgment

to the defendants. For the reasons set out below, we **AFFIRM** the district court's judgment.

I. BACKGROUND

We begin with the allegations of the complaint. Larry Tawney, Jr. spent the night of July 12, 2018, in the Portage County Jail awaiting transport to the Lorain Correctional Institution. Tawney alleges that between 10 p.m. that evening and 5 a.m. on July 13, correctional officers or sheriff's deputies wearing masks and tactical gear entered his cell on the Jail's second floor and beat him to the point that he lost consciousness. Among the injuries claimed were lacerations to his mouth, a dislocated jaw, internal bleeding, and blood clotting. Tawney alleges that, while still unconscious, he received stiches on the outside and inside of his mouth. He asserts that he woke on July 13 with a bloody mouth from the stitches, prompting him to leave a "kite" requesting medical attention for his injuries with the Jail.

That same morning, correctional officers drove Tawney to the Lorrain Correctional Institution. Tawney alleges that upon his arrival he discussed the assault with the intake nurse, but she refused to take photographs of his injuries or to note on the intake form his bruises and other injuries. When he was sent to the Lake Erie Correctional Institution in September 2018, Tawney continued to seek medical care related to the alleged assault. He claims that the treatment he received was inadequate.

Tawney brought this federal civil rights lawsuit in July 2020, alleging claims against Portage County, the

Portage County Sheriff David Doak in his official and individual capacities, the Sheriff's chief deputy Dale Kelly in his official and individual capacities, and twenty-three correctional officers and sheriff's deputies in their official and individual capacities.[1] His first five counts are brought under 42 U.S.C. § 1983 and allege that the defendants violated his Eighth Amendment rights by, among other actions, using excessive force, destroying surveillance footage, failing to adequately train or supervise subordinates who participated in the beating, failing to intervene, acting with deliberate indifference to his serious medical needs, and failing to report the assault. Tawney also brought a claim against Portage County under *Monell v. Department of Social Services*, 436 U.S. 658 (1978), and a final claim under Ohio law against the individual defendants for the intentional infliction of emotional distress.

Portage County and the individual defendants argue that Tawney fabricated the attack. To refute Tawney's claim that the incident actually occurred, they attached Tawney's medical and video records from July 12 to 13 to their answer to the complaint and then moved for judgment on the pleadings pursuant to Rule 12(c). The district court converted that motion into a motion for summary judgment on one issue—the fact of the attack—and required the refiling of the proffered

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[1] The defendant correctional officers and deputies are: Robert Symsek, John Hostler, Derek McCoy, Mike Skilton, Circe Hartman, Jason Joy, Dan Smith, Susanne Sattler, Bill Burns, Doug Drake, Vince Lombardo, Justin Schifko, Bryan Morganstern, Claudette McCullough, Janice Clark, Matt Holbrook, Chay Vue, Barry Thrush, Cameron Stockley, Shawn Lansinger, Eric Noell, Erica Jarvis, and Austin Wilson.

exhibits to comply with the evidentiary quality standard of Rule 56. The court also allowed limited discovery on whether the incident in question had occurred. Tawney responded in opposition to the motion for summary judgment but did not conduct further discovery.

After full briefing, the district court granted summary judgment to the defendants. The court declined to consider the July 13, 2018 intake medical records from the Lorain Correctional Institution as evidence that Tawney was uninjured, and therefore not attacked on the night of July 12, because Tawney alleged that the intake nurse had refused to document his injuries. But the district court did consider the newly authenticated video evidence and photographs of Tawney from his intake at the Lorain Correctional Institution. Concluding that the video and photographic evidence blatantly contradicted Tawney's allegation of assault, the court found that there was no genuine dispute of material fact regarding the assault's occurrence, and no reasonable jury could return a verdict in Tawney's favor. Tawney timely appealed.

II. ANALYSIS

We review a district court's grant of summary judgment de novo. *Morgan v. Fairfield Cnty.*, 903 F.3d 553, 560 (6th Cir. 2018). Summary judgment is appropriate if, viewing the evidence in the light most favorable to the non-moving party and drawing all reasonable inferences in that party's favor, "there is no genuine issue as to any material fact" and "the moving party is entitled to a judgment as a matter of law." *Harris v. Bornhorst*, 513 F.3d 503, 509 (6th Cir. 2008)

(quoting Fed. R. Civ. P. 56(c)); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986). A fact is material if its resolution "might affect the outcome of the suit," and genuine if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248. Viewing the evidence in the light most favorable to the non-moving party "usually means adopting the plaintiff's version of the facts." *Coble v. City of White House*, 634 F.3d 865, 868 (6th Cir. 2011). There is a limited exception to our standard summary judgment analysis, however, when video evidence exists and "so utterly discredit[s]," *id.*, the plaintiff's story that "no reasonable jury could believe it," *Scott v. Harris*, 550 U.S. 372, 380 (2007).

The parties offered only a handful of records on summary judgment. The defendants provide surveillance videos of Tawney's activity in the jail in the early hours of July 13, 2018, from a little after midnight to about 11:30 a.m. that morning. James Bauerle, the Director of Engineering for Exacq Technologies and one of the authors of Portage County's Video Management System software, provided an affidavit to authenticate the videos. The roughly eight hours of timestamped video, however, do not include footage of the first two hours—10 p.m. to midnight—of the period in which Tawney alleges that various defendants assaulted him. The defendants also presented Lorain Correctional Institution's intake records and photographs from July 13, the morning after the alleged attack. These records show that Tawney exhibited no medical issues that would be consistent with the alleged physical assault. Tawney

filed affidavits from himself, his sister, a fellow detainee who claimed to have heard the alleged attack, and a private investigator. His sister's affidavit included a purported medical "kite" that Tawney filed with the County Jail the morning after the assault, but no authenticating documentation. The defendants presented an affidavit from Lieutenant Bryan Morgenstern asserting that the Portage County Jail did not and does not use medical kites like the one Tawney proffered. Tawney also offered the Jail's records, which indicate that he was detained in a second-floor cell rather than the first-floor cell shown on the videos.

This is a rare case in which the video evidence—even as incomplete as it is—so clearly contradicts a plaintiff's version of events that summary judgment is proper. From a little after midnight on the morning of July 13, 2018, until around 4 a.m., the videos show correctional officers making occasional rounds across the two tiers of the visible jail cells, but no officer or deputy entering any of the cells. Tawney exits cell number 107 on the first floor around 5:30 a.m., and then returns soon after. Although seen only from a distance, nothing about his appearance or gait suggests injury. His face is not bloody, and he walks normally. Around 9:30 a.m. that same morning, Tawney exits his first-floor cell again, and within fifteen minutes is shown mopping outside of his cell door and speaking with others housed in the jail. Tawney appears in other videos of that morning walking along a hallway beside a correctional officer. Again, his gait appears normal and there are no visible signs of injury. In one video, Tawney sits in a reception area eating a sandwich from a bagged lunch. He does not appear upset or in pain.

Of course, not all individuals react to trauma in the same way. But recall Tawney's allegations: not only was he beaten, but he was also kicked in the head until he fell unconscious and awoke with stitches both inside and outside his mouth. The video and photographic evidence disproves that account. In the security camera footage from July 13, there is no obvious blood, stitches, or wounds near Tawney's mouth. The photographs from the Lorain Correctional Institution taken on July 13 soon after Tawney's arrival at the prison similarly offer no suggestion that he recently suffered any trauma to his mouth or face. The front and side views of Tawney's face show no signs of injury.

Nevertheless, we must be careful with video evidence. We apply the normal summary judgment framework if there is a sign that the video evidence is altered or if other evidence shows that what the video "depicts differs from what actually happened." *See Scott*, 550 U.S. at 378. Tawney asserts that the video evidence is doctored. He first asserts that the defendants' videos are not reliable because a roster history from the Jail shows, and his memory supports, that he was housed on the second floor of the jail rather than in cell 107 as the videos depict. He offers the affidavit of Benjamin Robinson, another man incarcerated in the Portage County Jail in July 2018, who asserts that Tawney slept in a second-floor cell during that period. Robinson states that one night he heard footsteps going into Tawney's cell and "loud thumping noises that [he] would associate with people hitting someone." Tawney suggests that this evidence leaves doubt about whether the videos were taken on July 12 and 13, 2018. Tawney also questions the

reliability of the videos based on the skips and jumps in the footage, which he asserts are evidence of editing.

These discrepancies between the video and the roster and the time jumps on the videos, however, are insufficient to create a genuine issue of material fact. Tawney leaves unrefuted the evidence in the record establishing that the videos offer a genuine and accurate depiction of the night in question. Bauerle's declaration authenticating the videos confirms that the videos were recorded with Exacq's software; that, based on a standard cryptographic algorithm, the videos were not edited, altered, or tampered with after they were exported from the server; and that it would be almost impossible for the defendants to edit, alter, or tamper with the files before export. Bauerle also explains that the jumps in the video arise because the security cameras at the Portage County Jail record only in response to motion. The anomalies Tawney identifies are not evidence of tampering, but instead the result of imprecise motion sensing from the cameras. The difference between Tawney's cell number listed on the roster and his location in the video raises some questions about the accuracy of the Portage County Jail's recordkeeping, but the fact remains that the defendants have presented an affidavit from the software developer explaining that the videos' cryptographic algorithm confirms the date and unedited state of the video evidence. Given the unrefuted authenticity and accuracy of the videos, we may rely on those videos in interpreting the events of July 13.

Moreover, Tawney does not dispute the authenticity of the intake photographs from Lorain, taken on the day after the alleged beating. Tawney's primary argument against the evidentiary value of the photographs is that they were not images taken for the purpose of documenting medical issues or injuries. But this does not undermine what the photographs clearly show: Tawney was without obvious facial injuries that would comport with being beaten and having multiple stitches both inside and outside his mouth.

With the evidence clearly contradicting that Tawney suffered any injury on July 13, 2018—and nothing raising genuine doubts about the authenticity and accuracy of that evidence—the district court was correct in granting the defendants summary judgment.

III. CONCLUSION

For the reasons stated above, we **AFFIRM** the district court's grant of summary judgment in favor of all defendants.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. 1:20-cv-01541

[Filed: August 5, 2021]

LARRY TAWNEY, JR.,	)
	)
Plaintiff,	)
	)
v.	)
	)
PORTAGE COUNTY, OHIO, *et al.*,	)
	)
Defendants.	)
	)

Judge J. Philip Calabrese

Magistrate Judge David A. Ruiz

OPINION AND ORDER

Plaintiff Larry Tawney, Jr. was sentenced in State court to a term of imprisonment. He spent the night in the county jail awaiting transport to prison. In this federal civil rights lawsuit, Plaintiff alleges that various public employees entered his cell and viciously attacked him. Defendants Portage County, Ohio and the employees named as defendants in their official

and individual capacities deny that anyone ever attacked Mr. Tawney. On that basis they moved for judgment on the pleadings, attaching evidence they contend disproves the allegations. Because of concerns about the procedural propriety of considering these materials at the pleading stage, and to focus the parties on the threshold question whether this attack in fact happened, the Court converted the motion to one for summary judgment limited to the threshold question whether the alleged incident in fact occurred.

With the benefit of a summary-judgment record, the Court determines that the surveillance videos of Mr. Tawney's cell on the night in question, along with the intake photograph at the State prison the next day, foreclose a reasonable jury from finding in his favor at trial. For these reasons, as more fully explained below, the Court **GRANTS** judgment in favor of Defendants.

FACTUAL AND PROCEDURAL BACKGROUND

Construing the evidence in favor of Plaintiff, the record establishes the following facts relevant to the parties' respective claims and defenses at this stage of the proceedings.

A. The Alleged Assault of Mr. Tawney and Its Claimed Cover-Up

On July 12, 2018, Plaintiff Larry Tawney, Jr. was detained in the Portage County jail following a criminal conviction while awaiting transport to the State prison system. (ECF No. 20-1, ¶ 3, PageID #360.) Sometime that night, between 10:00 pm and 5:00 am, Mr. Tawney claims that several sheriff's deputies or correctional

officers entered his cell "and physically attacked him, kicking him in the head and body to the point where [he] lost consciousness." (ECF No. 1, ¶ 9, PageID #10; *see also* ECF No. 20-1, ¶ 4, PageID #360.) Because his attackers concealed their faces and beat him to the point where he lost consciousness, Mr. Tawney cannot identify them. (*Id.*)

As a result of this unprovoked attack, Plaintiff claims he sustained numerous injuries, including severe lacerations to his mouth, which "was bleeding from stitches or sutures that were placed in and around my mouth," a dislocated jaw, and internal injuries, including internal bleeding and blood clotting. (ECF No. 20-1, ¶ 6, PageID #360; *see also* ECF No. 1, ¶ 10, PageID #11.) Plaintiff requested medical attention at the jail and stated on the form that, "You guys are trying to cover up what happened." (ECF No. 20-1, ¶¶ 6 & 7, PageID #360.)

In his complaint, Plaintiff alleges that he was transported to the State prison system in such a way as to conceal his injuries. (ECF No. 1, ¶¶ 11 & 12, PageID #11.) In his affidavit opposing summary judgment, Mr. Tawney swears that the intake nurse at the State prison refused to take pictures of his body to show his bruises. (ECF No. 20-1, ¶ 18, PageID #362.) Further, according to the affidavit, the nurse refused to note on the intake form that Mr. Tawney had any bruises or injuries around his mouth. (*Id.*) In the State prison system, Mr. Tawney sought treatment for injuries from the attack, but he claims that treatment was inadequate. (*Id.*, ¶¶ 20, 23, 25 & 27, PageID# 362–63.)

According to the complaint, this experience forms part of a custom and policy at the Portage County jail of beating and abusing detainees "by starving them, torturing them, depriving them of medical care and other barbarities." (ECF No. 1, ¶ 16, PageID #12.) Plaintiff alleges that Portage County failed to take any action in response to the attack. (*Id.*, ¶ 13.) Further, according to Plaintiff's allegations, Defendants went so far as to fail to document his treatment and destroyed videotapes that would have showed the attack. (*Id.*, ¶ 15, PageID #11-12; *id.*, ¶ 26, PageID #14.) Plaintiff alleges that twenty others have made similar complaints in affidavits, but Portage County has undertaken no investigation, discipline, or prevention of abuses. (*Id.*, ¶¶ 18–19.)

Based on his allegations, Plaintiff names as defendants Portage County, the Portage County Sheriff in his official and individual capacity, the Sheriff's chief deputy in his official and individual capacities, and twenty-three sheriff's deputies or correctional officers in their official and individual capacities—each of whom Plaintiff alleges participated in some way in his beating or the alleged cover-up. (ECF No. 1, ¶¶ 4-6 & 22, PageID #8-10 & 13.) Plaintiff asserts five counts under 42 U.S.C. § 1983 claiming violation of his rights under the Eighth Amendment as follows:

	Defendants	Basis for Allegations
I.	All Defendants	Excessive force, destruction of surveillance video, filing false reports, and covering up abusive conduct

II.	Sheriff	Failed to train and supervise his subordinates and otherwise acquiesced in their conduct
III.	Individual Defendants (uninvolved in the assault)	Failure to intervene or minimize the duration and effects of the assault
IV.	(Individual) Defendants	Deliberate indifference to Mr. Tawney's serious medical needs
V.	Individual Defendants	Failure to report assault and falsification of documents

Additionally, in Count VI, Plaintiff brings a claim against Portage County under *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978). In Count VII, Plaintiff alleges intentional infliction of emotional distress against the individual Defendants under Ohio law.

B. Defendants' Records

In response to the allegations of the complaint, Defendants answered and incorporated the following three items into their responsive pleading.

First, Defendants provided surveillance video of Mr. Tawney's cell on the night of the alleged assault and of Mr. Tawney in other areas of the jail the following morning. The Court's preliminary review of this video,

which runs approximately 8 hours and 26 minutes, showed that the video contains some gaps lasting a few minutes at a time. Moreover, the video is not date-stamped and does not include video from two hours (from 10 pm to midnight) on July 12, 2018. In their answer filed at the same time as the video, Defendants deny that Mr. Tawney was attacked, claim he made up the incident, never told Defendants about an attack, and the videos prove that no one entered his cell on the night in question and that he was in good health the next morning, showing no problems with mobility or eating. (ECF No. 7, ¶ 10, PageID #216.)

Second, intake records from the State prison system dated July 13, 2018—the day after the alleged attack—show no medical issues or concerns with Mr. Tawney. Further, the records reflect that Mr. Tawney denied any medical issues or concerns. They contain no indication of any assault the previous day. (ECF No. 7-2, PageID #230–31.)

Third, the State prison system's booking photo of Mr. Tawney, also dated July 13, 2018, shows a smiling and apparently healthy individual, though the photo is admittedly small and somewhat grainy in black and white. (ECF No 7-3, PageID #233.)

Then, Defendants moved for judgment on the pleadings under Rule 12(c). (ECF No. 8, PageID #234.)

C. Conversion of the Motion for Judgment on the Pleadings

On January 5, 2021, the Court provided notice to the parties that it will treat the motion for judgment on the pleadings as a motion for summary judgment,

limited to the question of whether the attack on Mr. Tawney actually occurred. (*See* Dkt. Entry, Jan. 5, 2021.) At a status conference on the record later, the Court directed Defendants to make the three documents submitted with the answer of evidentiary quality under Rule 56. (Dkt. Entry, Jan. 15, 2021.) Once Defendants did so, the Court directed Plaintiff to limit the discovery needed to respond to the pending motion to "to what is necessary to respond to the threshold issues raised in Defendants' motion." (Dkt. Entry, Mar. 18, 2021.) Based on the parties' respective evidentiary submissions, briefs, and supplemental briefs and arguments, the threshold dispute between the parties is ripe for decision.

ANALYSIS

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, summary judgment is appropriate "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). On a motion for summary judgment, the Court must view evidence in the light most favorable to the non-moving party. *Kirilenko-Ison v. Board of Educ. of Danville Indep. Schs.*, 974 F.3d 652, 660 (6th Cir. 2020) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)).

On a motion for summary judgment, the moving party has the initial burden of establishing that there are no genuine issues of material fact as to an essential element of the claim or defense at issue. *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479–80 & n.12 (6th Cir. 1989); *Chappell v. City of Cleveland*, 584 F. Supp.

2d 974, 988 (N.D. Ohio 2008). After discovery, summary judgment is appropriate if the non-moving party fails to establish "an element essential to that party's case and upon which that party will bear the burden of proof at trial." *Tokmenko v. MetroHealth Sys.*, 488 F. Supp. 3d 571, 576 (N.D. Ohio 2020) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)).

To determine whether a genuine dispute about material facts exists, it is not the Court's duty to search the record; instead, the parties must bring those facts to the Court's attention. *See Betkerur v. Aultman Hosp. Ass'n*, 78 F.3d 1079, 1087 (6th Cir. 1996). "The party seeking summary judgment has the initial burden of informing the court of the basis for its motion" and identifying the portions of the record "which it believes demonstrate the absence of a genuine issue of material fact." *Tokmenko*, 488 F. Supp. 3d at 576 (citing *Celotex Corp.*, 477 U.S. at 322). Then, the nonmoving party must "set forth specific facts showing there is a genuine issue for trial." *Id.* (citing *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 250 (1986)). "When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co.*, 475 U.S. at 586.

If a genuine dispute exists, meaning "the evidence is such that a reasonable jury could return a verdict for the nonmoving party," summary judgment is not appropriate. *Tokmenko*, 488 F. Supp. 3d at 576 (citing *Anderson*, 477 U.S. at 250). However, if "the evidence is merely colorable or is not significantly probative," summary judgment for the movant is proper. *Id.* The

"mere existence of some factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment." *Scott v. Harris*, 550 U.S. 372, 380 (2007) (quoting *Anderson*, 477 U.S. at 247–48).

I. Video and Photographic Evidence

In the current procedural posture, evaluation of the propriety of summary judgment turns on the key evidence of the video and the photographs of Mr. Tawney taken upon his admission to the State prison. "[W]here, as here, there is 'a videotape capturing the events in question,' the court must 'view[] the facts in the light depicted by the videotape.'" *Green v. Throckmorton*, 681 F.3d 853, 859 (6th Cir. 2012) (quoting *Scott*, 550 U.S. at 378–81).

I.A. What the Evidence Shows

The Court reviewed the surveillance video Defendants supplied. It shows the following. Although it does not contain footage from 10 pm through midnight on July 12, 2018, from midnight until 5 am, no one entered Mr. Tawney's cell. Around 5:30 am, the lights in the jail are on. Mr. Tawney exits his cell for a few minutes, then returns and lays on his bed with his legs curled up.

On the morning of July 13, 2018, Mr. Tawney does not have any visible injuries on his head. It is not possible to tell whether he has any injuries to his body concealed beneath his clothing. The video shows Mr. Tawney walking without difficulty next to a corrections officer. Further, it shows him briefly interacting in a friendly manner with the officer. Later that morning,

videos show Mr. Tawney entering and exiting his cell, which he mops. He also mops the area outside his cell and removes a bundle of his belongings from his cell. Shortly before noon, Mr. Tawney sits on a bench, appears calm and comfortable, and eats a sandwich from a bag lunch as officers and prisoners walk around.

In the current procedural posture, the Court declines to consider the intake report of the prison nurse as evidence in support of Defendants' motion. Although this report provides no indication that Mr. Tawney was suffering from any significant medical problems, and notes the absence of objective findings of trauma or wounds (ECF No. 7-2, PageID #230; ECF No. 16-2, PageID #329), Plaintiff contends that the nurse refused to document his injuries from the attack (ECF No. 20-1, ¶ 1 8, PageID #362). Construing the evidence in light of the video, however, the Court disregards this medical record.

However, the prison did take a series of color pictures of Mr. Tawney from various angles upon his admission on July 13, 2018. (ECF No. 16-2, PageID #331–32.) These photos, which include views of Mr. Tawney with his teeth showing and mouth closed, show *no* visible signs of injury of any kind. (*Id.*) Defendants' record confirms these phots were taken at intake on July 13, 2018. (*Id.*, PageID #333.) No information in the record calls that fact into question.

I.B. Video Evidence and Summary Judgment

In *Scott v. Harris*, 550 U.S. 372, 378–81 (2007), the Supreme Court addressed how to handle disputes of

fact on a motion for summary judgment in the face of video and photographic evidence. Although courts must ordinarily construe the record on summary judgment in favor of the non-moving party, "[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." *Id.* at 380.

Such is the case here. Although Plaintiff's claims are not implausible, as in *Scott* the video and photographic evidence blatantly contradicts that story to the point where no reasonable jury could believe it. Setting aside the fact that the surveillance video fails to show anyone entering the cell during the night, in the morning Mr. Tawney does not appear injured. He interacts with other inmates and officers normally, and he eats a sandwich—all while swearing that the attack left his mouth bleeding from stitches or sutures. (ECF No. 20-1, ¶¶ 6–9, PageID #360–61.) Moreover, the prison's intake photos on July 13, 2018 show no evidence of an injury to Mr. Tawney's head or mouth. This evidence alone utterly discredits Plaintiff's view of the facts. There is no *genuine* dispute of material fact, and no reasonable jury could return a verdict finding that the events Mr. Tawney alleges actually happened.

II. Plaintiff's Evidence and Arguments

Where photographic or video evidence has indications of being "doctored or altered in any way," or a non-movant provides evidence that "what it depicts differs from what actually happened," then the normal summary-judgment framework may apply. *See Scott*,

550 U.S.at 378. Under the law of this Circuit,where the video does not tell the whole story in a material respect, or reasonable jurors could interpret the video evidence differently, summary judgment is not appropriate. *Green*, 681 F.3d at 865. Such is the case here, Plaintiff maintains. But each argument Plaintiff advances fails to create a genuine dispute over the video and photographic evidence.

II.A. Reliability of the Videos

Plaintiff questions the reliability of the videos in two respects. (ECF No. 20, PageID #347.) First, he argues that the videos were taken at another time, either earlier in his July 2018 stay or, perhaps, during an earlier period of detention. (*Id.*) As his primary support for this argument, Plaintiff provides evidence that the jail's records for the night in question show that he was detained in cell 169, on the second floor of the jail. (ECF No. 20, PageID #349; ECF No. 20-1, ¶ 16, PageID #361; ECF No. 20-4, PageID #384 & #385–89.) But the video shows Mr. Tawney in cell 107, on the jail's first floor. (*See, e.g.*, ECF No. 20-1, ¶ 16, PageID #361.) Plaintiff bolsters his position with an affidavit from a fellow detainee, who swears that Mr. Tawney was housed on the second floor and that he heard the attack. (ECF No. 20-5, ¶¶ 4 & 6, PageID #390.) These discrepancies do not create a genuine issue of material fact because the undisputed evidence in the record establishes that (1) the videos are authentic and have not been altered, and (2) the date stamps in an embedded cryptographic algorithm show that the videos were made on the dates and times indicated.

(ECF No. 16-1, ¶ 11, PageID #327; *see also id.*, ¶ 6, PageID #326.)

Second, Plaintiff points to skips and jumps in the videos to argue that they were selectively edited, undermining their reliability. (*See, e.g.*, ECF No. 20-1, ¶ 17, PageID #362.) Typically, these skips and jumps last for a matter of thirty seconds or so. But in one case the jump is just over three and a half minutes. (*Id.*) Defendants offer a reasonable and legitimate explanation: the cameras are motion activated, and occasional delays or issues with the motion-sensing equipment may make the video appear as selectively edited. (ECF No. 16-1, ¶ 10, PageID #327.) Again, Plaintiff offers no evidence to counter this explanation. Even setting it aside, however, the record still forecloses a rational jury from finding in Plaintiff's favor because the video evidence from the morning of July 13 at the jail shows Mr. Tawney eating and otherwise healthy. Put another way, even if any particular gap on the videos were long enough to permit an attack like the one Mr. Tawney describes (and the two-hour gap on the night of July 12 certainly amounts to one), the record as a whole is so one-sided to prevent a finding in his favor.

On these points and others, Mr. Tawney maintains there are factual disputes between what he remembers of the morning of his transport to prison and what the videos show that preclude summary judgment. (ECF No. 20, PageID #349.) Specifically, Mr. Tawney swears that he did not mop the floor at the jail on July 13, 2018 but on another day and that his recollections of the details of the morning before his transport to prison

differ from what the videos show. (ECF No. 20-1, ¶¶ 13, 14 & 15, PageID #362.) But the law, consistent with well-established understandings of neuroscience, readily explains discrepancies of this sort without the need for a jury trial. *See, e.g.*, *United States v. Smithers*, 212 F.3d 306, 312 n.1 (6th Cir. 2000) (explaining that eyewitness testimony may often prove unreliable and the factors affecting memory and perception). In short, as between Mr. Tawney's memory and the undisputed evidence the videos provide, no rational jury could credit the latter over the former and return a verdict in Plaintiff's favor.

II.B. Intake Photos

Plaintiff maintains that the intake photos at the prison do not reflect the extent of his injuries, which primarily were to his body. (ECF No. 20, PageID #347–48.) Beyond this argument, Plaintiff presents no explanation—let alone evidence—to explain why the prison's intake photo shows no injury to his mouth. In his affidavit, Mr. Tawney swears he was kicked in the head and bleeding from stitches or sutures to his mouth. (ECF No. 20-1, ¶¶ 4 & 6, PageID #360.) The numerous intake photos on the day after the alleged assault from various angles belie this claim. (ECF No. 16-2, PageID #329.) Indeed, the prison intake photographs show no injuries at all. Even setting aside the evidence from the videos altogether, the intake photographs foreclose a rational finder of fact from returning a verdict for Plaintiff.

II.C. Plaintiff's Other Evidence

Plaintiff also provides other affidavits—from Mr. Tawney's sister (ECF No. 20-3), an investigator (ECF No. 20-4), and a fellow detainee at the jail (ECF No. 20-5)—to try to create disputes of fact (ECF No. 20, PageID #351–52). However, as in *Scott*, none of these affidavits or Plaintiff's other evidence creates a *genuine* issue of material fact in the face of videotapes and photographic evidence.

II.D. Procedural Notes

Contrary to Plaintiff's suggestions (ECF No. 20, PageID #358; ECF No. 24, PageID #424), the Court did not foreclose depositions after converting the motion to one for summary judgment. Although the Court limited the proceedings to the threshold question whether the assault occurred, nothing foreclosed Plaintiff from requesting a deposition or two on issues relating to, say, the authenticity of the surveillance video from the jail. Nor did Plaintiff suggest, consist with Rule 56(d), that he needed additional facts to respond to the motion. To the contrary, the record shows that in status conferences in March and April 2021 the parties discussed Plaintiff's preparation of a record to respond properly. (Minutes, Mar. 18, 2021; Minutes, Apr. 22, 2021.) Further, the record shows that Plaintiff requested and received multiple extensions and opportunities to meet each of Defendants' arguments. (*See, e.g.*, ECF No. 18; Order, May 13, 2021; ECF No. 24; Order, July 12, 2021.) Tellingly, in none of Plaintiff's submissions did he question the reliability of the evidence Defendants put into the record regarding the authenticity or accuracy of the videos or counter

that evidence with his own to create a genuine dispute of material fact. (ECF No. 16-1.)

* * *

Finally, the Court reaches its determination based on the record evidence in this case and without respect to the ruling in *McClafferty v. Portage County Board of Commissioners*, No. 5:19CV2219, 2021 U.S. Dist. LEXIS 61869, 2021 WL 1214841 (N.D. Ohio Mar. 30, 2021). There, another court in this District granted judgment on the pleadings on the excessive force claims of a detainee at the same jail as Mr. Tawney. In that case, McClafferty solicited numerous detainees, including Mr. Tawney, to file civil rights complaints, 2021 WL 1214841, at *7, and an independent investigation found that these complaints (with one exception not relevant here) were "wholly fabricated or greatly exaggerated," *id.* at *4 n.8. McClafferty's scheme included Mr. Tawney's sister, who provided an affidavit opposing Defendants' motion in this case. *Id.* at *9. Although the record from *McClafferty* may necessitate further inquiry should this case proceed, the Court notes that it limited its ruling on the threshold summary-judgment issues in this case to the record discussed above and did not take *McClafferty* into account.

CONCLUSION

For the foregoing reasons, this case presents a record so one-sided that it does not require submission to a jury. Accordingly, construing Defendants' motion for judgment on the pleadings (ECF No. 8) as a motion

under Rule 56, the Court **GRANTS** the motion and enters judgment in favor of Defendants.

SO ORDERED.

Dated: August 5, 2021

/s/ J. Philip Calabrese
J. Philip Calabrese
United States District Judge
Northern District of Ohio

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. 1:20-cv-1541

[Filed: August 5, 2021]

LARRY TAWNEY, JR.,	)
	)
Petitioner,	)
	)
v.	)
	)
PORTAGE COUNTY, OHIO, et al.,	)
	)
Respondent.	)
	)

Judge J. Philip Calabrese

Magistrate Judge David A. Ruiz

JUDGMENT

The Court filed its Opinion and Order in this matter. Accordingly, the Court terminates this case pursuant to Rule 58 of the Federal Rules of Civil Procedure.

SO ORDERED. Dated: August 5, 2021

s/ J. Philip Calabrese
United States District Judge
Northern District of Ohio