NOT RECOMMENDED FOR PUBLICATION

No. 23-3337

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Feb 21, 2024
KELLY L. STEPHENS, Clerk

JERMEAL WHITE,

Plaintiff-Appellant,

v.

WARDEN RONALD ERDOS, et al.,

Defendants-Appellees.

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

ORDER

Before: LARSEN, NALBANDIAN, and READLER, Circuit Judges.

Jermeal White, an Ohio prisoner proceeding pro se, appeals the district court's grant of summary judgment to the defendants in his civil rights action filed under 42 U.S.C. § 1983. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a). For the reasons that follow, we affirm.

White sued four employees of the Southern Ohio Correctional Facility, his former place of confinement: Warden Ronald Erdos, Unit Manager Chief Cynthia Davis, and two John Doe Correction Officers, later identified as Tyler Parish and Wes Welch. White alleged that on August 17, 2019, a correction officer and a sergeant told him that he would be moving to another cell. White told the correction officer that he was afraid and felt "mentally unstable," and he later told the sergeant that he did not refuse to "cuff up" for the correction officer. Nevertheless, a cell extraction team that included Parish and Welch responded to White's cell "for no reason." White agreed to be handcuffed. During his transfer to the other cell, Parish and Welch used excessive force, snapping White's "right elbow out [of] place." He was denied medical treatment by a nurse

Appendix-A

We review de novo the "district court's grant of summary judgment." *Garza v. Lansing Sch. Dist.*, 972 F.3d 853, 872 (6th Cir. 2020). Summary judgment is proper when the evidence presented 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). The movant bears the burden of showing "that there is an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). The party opposing a motion for summary judgment "may not rest upon the mere allegations or denials of his pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (alteration in original). "When 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). And when video evidence is available, the facts must be viewed "in the light depicted by the videotape." *Id.* at 381.

An Eighth Amendment excessive-force claim has "both an objective and a subjective component." *Rafferty v. Trumbull County*, 915 F.3d 1087, 1094 (6th Cir. 2019) (quoting *Williams v. Curtin*, 631 F.3d 380, 383 (6th Cir. 2011)). The objective component requires a "sufficiently serious" infliction of pain. *Cordell v. McKinney*, 759 F.3d 573, 580 (6th Cir. 2014) (quoting *Williams*, 631 F.3d at 383). The subjective component requires application of force "maliciously and sadistically to cause harm." *Id.* (quoting *Hudson v. McMillian*, 503 U.S. 1, 7 (1992)).

White failed to support his Eighth Amendment claim with evidence creating a material factual dispute for trial. White relied on his own unsworn declarations and the defendants' evidence, including a video of the incident. White claims that the video supports his version of events, but it does not. The video clearly refutes White's claim that Parish and Welch subjected him to excessive force on August 17, 2019, such that a reasonable jury could not believe that claim. *See Scott*, 550 U.S. at 380. In particular, the video footage shows an uneventful transfer of White from one cell to another. At no point in the video do Parish and Welch use "so much extreme force on" White that his right elbow snaps out of place, as he alleged. Given the video and other evidence of record, White has not shown that there is a genuine dispute of material fact for

submission of his excessive-force claim to a jury. *See id.*; *Shreve v. Franklin County*, 743 F.3d 126, 132 (6th Cir. 2014).

The district court addressed OAC Rule 5120-9-02 and determined that White failed to show that it supported his excessive-force claim. We agree. OAC Rule 5120-9-02 provides the procedures for reporting and investigating uses of force for the Ohio Rehabilitation and Correction Department. Among other provisions, it requires a supervisor to obtain incident reports from all prison staff who were involved in or witnesses to a reported use-of-force incident and written statements from all inmates who were subjected to force. OAC Rule 5120-9-02(A)(1)-(2). It also requires an examination and subsequent written assessment of individuals involved in a use-of-force incident by medical staff. OAC Rule 5120-9-02(A)(4). The use-of-force reports in White's case indicate that prison staff had planned to use force because White had refused to be handcuffed and moved to another cell, but that force was not ultimately required because he agreed to be handcuffed and was transferred peacefully. Medical evaluation forms prepared by a nurse and the officers involved in White's cell transfer did not note any injuries observed by the witnesses or reported by White and did not note any medical treatment provided. These documents indicate compliance with OAC Rule 5120-9-02, and White has not shown otherwise. Nor has he shown how OAC Rule 5120-9-02 supports his excessive-force claim.

White asks us to apply *Combs*, in which we held that a use-of-force report prepared by a committee appointed to investigate a prison disturbance was improperly excluded as evidence for summary-judgment purposes in an excessive-force case. 315 F.3d at 554-56. *Combs* does not change the outcome of this case. The use-of-force reports in White's case were considered at the summary-judgment stage. *See id.* And given those reports, the video, and other evidence presented, White's excessive-force claim could not survive the defendants' summary-judgment motions. *See Scott*, 550 U.S. at 380; *Shreve*, 743 F.3d at 132.

White does not challenge the dismissal of his claims against Erdos and Davis. The "failure to raise an argument in [an] appellate brief [forfeits] the argument on appeal." *Radvansky v. City*

submission of his excessive-force claim to a jury. *See id.*; *Shreve v. Franklin County*, 743 F.3d 126, 132 (6th Cir. 2014).

The district court addressed OAC Rule 5120-9-02 and determined that White failed to show that it supported his excessive-force claim. We agree. OAC Rule 5120-9-02 provides the procedures for reporting and investigating uses of force for the Ohio Rehabilitation and Correction Department. Among other provisions, it requires a supervisor to obtain incident reports from all prison staff who were involved in or witnesses to a reported use-of-force incident and written statements from all inmates who were subjected to force. OAC Rule 5120-9-02(A)(1)-(2). It also requires an examination and subsequent written assessment of individuals involved in a use-of-force incident by medical staff. OAC Rule 5120-9-02(A)(4). The use-of-force reports in White's case indicate that prison staff had planned to use force because White had refused to be handcuffed and moved to another cell, but that force was not ultimately required because he agreed to be handcuffed and was transferred peacefully. Medical evaluation forms prepared by a nurse and the officers involved in White's cell transfer did not note any injuries observed by the witnesses or reported by White and did not note any medical treatment provided. These documents indicate compliance with OAC Rule 5120-9-02, and White has not shown otherwise. Nor has he shown how OAC Rule 5120-9-02 supports his excessive-force claim.

White asks us to apply *Combs*, in which we held that a use-of-force report prepared by a committee appointed to investigate a prison disturbance was improperly excluded as evidence for summary-judgment purposes in an excessive-force case. 315 F.3d at 554-56. *Combs* does not change the outcome of this case. The use-of-force reports in White's case were considered at the summary-judgment stage. *See id.* And given those reports, the video, and other evidence presented, White's excessive-force claim could not survive the defendants' summary-judgment motions. *See Scott*, 550 U.S. at 380; *Shreve*, 743 F.3d at 132.

White does not challenge the dismissal of his claims against Erdos and Davis. The "failure to raise an argument in [an] appellate brief [forfeits] the argument on appeal." *Radvansky v. City*

of Olmsted Falls, 395 F.3d 291, 311 (6th Cir. 2005); *see Geboy v. Brigano*, 489 F.3d 752, 767 (6th Cir. 2007).

We therefore **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 23-3337

JERMEAL WHITE,

Plaintiff-Appellant,

v.

WARDEN RONALD ERDOS, et al.,

Defendants-Appellees.

Before: LARSEN, NALBANDIAN, and READLER, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Southern District of Ohio at Cincinnati.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

United States Court of Appeals for the Sixth Circuit

U.S. Mail Notice of Docket Activity

The following transaction was filed on 02/21/2024.

Case Name: Jermeal White v. Ronald Erdos, et al
Case Number: 23-3337

Docket Text:
ORDER filed : AFFIRMED. Mandate to issue, pursuant to FRAP 34(a)(2)(C), decision not for publication. Joan L. Larsen, John B. Nalbandian, and Chad A. Readler, Circuit Judges.

The following documents(s) are associated with this transaction:
Document Description: Order

Notice will be sent to:

Jermeal White
Ohio State Penitentiary
878 Coitsville-Hubbard Road
Youngstown, OH 44505

A copy of this notice will be issued to:

Mr. Richard W. Nagel
Ms. Marcy Ann Vonderwell

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JERMEAL WHITE,	:	Case No. 1:19-cv-1007
Plaintiff,	:	Judge Susan J. Dlott
v.	:	**ORDER ADOPTING REPORT AND RECOMMENDATION**
RON ERDOS, et al.,	:	
Defendants.	:	

This matter is before the Court on Objections to the Magistrate Judge's November 30, 2022 Report and Recommendation (Doc. 94) in which she recommended that Plaintiff Jermeal White's Motion for Summary Judgment (Doc. 86) be denied and Defendant Correction Officer Wes Welch's Cross-Motion for Summary Judgment (Doc. 90[1]) be granted. For the reasons that follow, the Magistrate Judge's Report and Recommendation (Doc. 94) will be **ADOPTED**.

I. BACKGROUND[2]

Jermeal White, a prisoner at the Southern Ohio Correctional Facility ("SOCF") in Lucasville, Ohio filed this pro se 42 U.S.C. § 1983 action on November 25, 2019 alleging violations of his civil rights while in custody. (Docs. 1, 27.) White alleges that on August 17, 2019, Corrections Officers Tyler Parish and Wes Welch used excessive force against him when he was handcuffed and transferred to different cells. (Docs. 1, 27.) Specifically, "Wes Welch and Tyler Parish used extreme for[ce] on Plaintiff for no reason, from the cell of unit K2-1, all

[1] Documents 89 and 90 appear to be the same filing. The Court will refer to and cite Document 90.

[2] The facts of this case were previously set forth in the Court's Order Adopting Reports and Recommendations, in which Correction Officer Tyler Parish's Cross-Motion for Summary Judgment was granted. (Doc. 84.) The facts relating to the alleged use of force by Corrections Officer Wes Welch arise from the same cell transfer incident as the alleged use of force by Corrections Officer Tyler Parish, for whom summary judgment was granted. The Court will repeat much of its prior factual recitation herein.

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the way to the hallway on the walk to segregation" for "no explainable reason." (Doc. 27 at PageID 149.) White claims that "Wes Welch dislocated Plaintiff[']s right elbow, and Tyler Parish assisted Welch in the force by trying to break Plaintiff[']s left elbow and hand for no reason." (*Id.* at PageID 148.) White alleges that he was denied medical attention for his injuries when the nurse checked on him and, after White told her of his injuries, she walked off. (Doc. 1 at PageID 11.) Plaintiff seeks injunctive relief and monetary damages. (*Id.* at PageID 12.)

On March 30, 2022, the Court adopted the Magistrate Judge's Reports and Recommendations in which she recommended denying White's Motion for Summary Judgment against Parish and granting Parish's Cross-Motion for Summary Judgment.[3] (Doc. 84). In ruling, the Court found that no genuine dispute of fact existed whether White's Eighth Amendment rights were violated when he was escorted by Parish and Welch during a cell transfer. (Doc. 84.) The Court found that "White's version of events—that extreme force was used against him for the entirety of his escort, causing his right elbow to snap out of place—is not plausible when considering the contrary video evidence, use of force reports, and medical examination report." (*Id.* at PageID 565.) The Court also found that White failed to carry his burden that qualified immunity would not apply to Parish. (*Id.*) Thus, only the claims against Welch now remain.

On April 26, 2022, White moved for summary judgment against Welch, who assisted Parish in the same cell transfer and allegedly injured White's right elbow during the escort. (Doc. 86.) On June 22, 2022, Welch responded in opposition and filed a Cross-Motion for Summary Judgment. (Docs. 89, 90.) White filed a Response in Opposition on July 5, 2022. (Doc. 91.)

[3] The Court also adopted the Magistrate Judge's recommendation that White's pro se Motion for Injunctive Relief be denied. (*Id.*)

A. November 30, 2022 Report and Recommendation

On November 30, 2022, the Magistrate Judge issued a Report and Recommendation recommending that White's Motion for Summary Judgment be denied and Welch's Cross-Motion for Summary Judgment be granted. (Doc. 94.) She found "no evidence that Defendant Welch used excessive force against Plaintiff" and that "[t]o the contrary, the evidence establishes that Plaintiff was cuffed and escorted to another cell without incident." (*Id.* at PageID 677.) The Magistrate Judge found Welch to be entitled to judgment as a matter of law with respect to White's claims under the Eighth Amendment. She considered White's statements that Welch bent and twisted his right wrist and arm and bent his arms and hands all the way up his back with Parish to cause his right elbow to snap out of place. (*See* Doc. 94 at PageID 675; Doc. 58-1; 58-2.) However, she found White's contentions to be unsupported in consideration of the video of the incident and other evidence. (Doc. 94 at PageID 675.) The Magistrate Judge concluded the evidence demonstrates White was escorted in "an unremarkable fashion" and "no force [was] used in this escort." (*Id.* at PageID 675–76.) The Magistrate Judge found White failed to demonstrate a violation of his Constitutional rights, and Welch is entitled to qualified immunity. (*Id.* at PageID 677.)

White objected to the Magistrate Judge's Report and Recommendation (Doc. 95), and Welch filed a Response (Docs. 95, 96). For the reasons that follow, the Court will **OVERRULE** White's Objections and **ADOPT** the Report and Recommendation (Doc. 94).

II. STANDARD OF REVIEW

A. Rule 72(b)

Magistrate judges are authorized to decide dispositive and non-dispositive matters pursuant to 28 U.S.C. § 636 and Rule 72 of the Federal Rules of Civil Procedure. Pursuant to

Rule 72(b)(2), a party may file "specific written objections to the proposed findings and recommendations" of a magistrate judge. The district judge must conduct a *de novo* review "of any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3); *see also Baker v. Peterson*, 67 F. App'x 308, 310 (6th Cir. 2003). "The district court need not provide *de novo* review where the objections are frivolous, conclusive or general." *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986) (per curiam) (cleaned up)).

"A party's objection should be specific, identify the issues of contention, and 'be clear enough to enable the district court to discern those issues that are dispositive and contentious.'" *Chapple v. Franklin Cnty. Sheriff's Officers FCCC 1 & 2*, No. 2:21-cv-05086, 2022 WL 16734656, at *2 (S.D. Ohio Nov. 7, 2022) (citing *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995)). "When a pleader fails to raise specific issues, the district court will consider this to be 'a general objection to the entirety of the magistrate report[, which] has the same effects as would a failure to object.'" *Id.* (quoting *Howard v. Sec'y of Health & Hum. Servs.*, 932 F.2d 505, 509 (6th Cir. 1991)).

B. Rule 56

Federal Rule of Civil Procedure 56 governs motions for summary judgment. Summary judgment is appropriate if "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). The movant has the burden of showing that no genuine issues of material fact are in dispute. *See Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 585–587 (1986); *Provenzano v. LCI Holdings, Inc.*, 663 F.3d 806, 811 (6th Cir. 2011). The movant may support a motion for summary judgment with affidavits or other proof or by exposing the lack of evidence on an issue for which the nonmoving party will bear the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317,

322–24 (1986). In responding to a summary judgment motion, the nonmoving party may not rest upon the pleadings but must "present affirmative evidence in order to defeat a properly supported motion for summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257 (1986).

A court's task is not "to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Id.* at 249. "[F]acts must be viewed in the light most favorable to the nonmoving party *only* if there is a 'genuine' dispute as to those facts." *Scott v. Harris*, 550 U.S. 372, 380 (2007) (emphasis added); *see also E.E.O.C. v. Ford Motor Co.*, 782 F.3d 753, 760 (6th Cir. 2015) (*en banc*) (quoting *Scott*). A genuine issue for trial exists when there is sufficient "evidence on which the jury could reasonably find for the [non-movant]." *Anderson*, 477 U.S. at 252; *see also Shreve v. Franklin Cnty., Ohio*, 743 F.3d 126, 132 (6th Cir. 2014) ("A dispute is 'genuine' only if based on *evidence* upon which a reasonable jury could return a verdict in favor of the non-moving party.") (emphasis in original) (citation omitted). "Factual disputes that are irrelevant or unnecessary will not be counted." *Anderson*, 477 U.S. at 248. "The court need consider only the cited materials, but it may consider other materials in the record." Fed. R. Civ. P. 56(c)(3). Finally, when cross motions for summary judgment have been filed, "the court must consider each motion separately on its merits, since each party, as a movant for summary judgment, bears the burden to establish both the nonexistence of genuine issues of material fact and that party's entitlement to judgment as a matter of law." *In re Morgeson*, 371 B.R. 798, 800–801 (B.A.P. 6th Cir. 2007).

III. ANALYSIS

White objects to the Magistrate Judge's Report and Recommendation, but his arguments are general and lack specificity. He contends that the Magistrate Judge "did not address the facts

and evidence, and law" and references Ohio Administrative Code § 5120-9-02 as well as his statement and exhibits attached to his motion. (Doc. 95 at PageID 683–84.) He argues that it is only "fair and just" for the Court to conclude that "Defendant['s] motion for summary judgment is wholly untruthful, and wrong in light of OAC. 5120-9-02 at the least." (*Id.* at PageID 684.)

White does not specify how his statement, exhibits, or Ohio Admin. Code § 5120-9-20 support his position. Ohio Administrative Code § 5120-9-20 is entitled "Use of force report and investigation" and governs the procedure following a reported use of force for the Ohio Rehabilitation and Correction Department. White seems to argue that the fact that a use of force report was prepared necessarily demonstrates a Constitutional violation. He does not cite any law that supports this broad position.

Further, although he references his statement and evidence, the Magistrate Judge carefully considered all evidence as did the Undersigned. In her November 30, 2022 Report and Recommendation, the Magistrate Judge reviewed the same evidence the Court considered when it evaluated summary judgment against Parish. The Undersigned reviewed this evidence again in consideration of White's Objections, which includes the video of the escort of White to two different cells (Doc. 58-1), Ohio Department of Rehabilitation and Correction, Deputy Warden of Operations Review of Use of Force file (Doc. 58-3), and Reports and Medical Exam Reports (Doc. 58-3). As compared to when he sought summary judgment against Parish, the only evidentiary difference is that White now cites his own brief and his own new statement. (*See* Docs. 85, 86.) The contents of his brief and statement are fairly similar to his other statements and assert that "Defendant Welch and Parish bent [his] arms and hands all the way back up [his] back for no reason" and that his "right elbow was indeed snapped out of place." (Doc. 85 at PageID 582.) White also asserts he told the nurse that he was "not good" following the cell

transfer and explained his injuries. (*Id.*) In her review of this evidence, and most notably, the video of the incident, the Magistrate Judge concluded that White failed to establish a violation of his Eighth Amendment rights by Corrections Officer Welch as the video shows an unremarkable cell transfer. (Doc. 94 at PageID 676.) The Undersigned agrees.

Although White disagrees with the Magistrate Judge, he fails to cite any portion of the Report and Recommendation to identify the portion of the ruling he finds problematic or how Ohio Administrative Code § 5120-9-02 supports his position. The Court is mindful that this is a pro se action, but parties have "the duty to pinpoint those portions of the magistrate's report that the district court must specially consider." *Mira*, 806 F.2d at 637 (quoting *Nettles*, 677 F.2d at 410). Because White's objections are not specific and do not identify the issues of contention, they are are not clear enough for the Court to review any particular portion of the record for the issue of concern that White views as dispositive. Nonetheless, the Court has reviewed the entire record and agrees with the Magistrate Judge's conclusions. White's objections are **OVERRULED**. *See Chapple*, 2022 WL 16734656, at *4 (dismissing prisoner's second and tenth objections as general objections where they did not state with specificity why the Court should review the Magistrate Judge's recommendation or pinpoint any legal arguments that are off the mark).

IV. CONCLUSION

For the reasons set forth herein, the Court **ADOPTS** the Magistrate Judge's Report and Recommendation that White's Motion for Summary Judgment be denied, Defendant Welch's

Cross-Motion for Summary Judgment be granted, and White's claims against Defendant Welch be terminated (Doc. 94).

IT IS SO ORDERED.

Dated: 3/23/2023

Susan J. Dlott
Judge Susan J. Dlott
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JERMEAL WHITE,	:	Case No. 1:19-cv-1007
Plaintiff,	:	Judge Susan J. Dlott
v.	:	**ORDER ADOPTING REPORTS AND RECOMMENDATIONS**
RON ERDOS, et al.,	:	
Defendants.	:	

This matter is before the Court on Objections to the Magistrate Judge's Report and Recommendation recommending that Plaintiff Jermeal White's Motion for Summary Judgment (Doc. 51) be denied and Defendant Corrections Officer Tyler Parrish's Cross-Motion for Summary Judgment (Doc. 58[1]) be granted and White's claims against Corrections Officer Parish be terminated (Doc. 80). Also before the Court is the Magistrate Judge's Report and Recommendation recommending that Plaintiff's pro se Motion for Injunctive Relief (Doc. 65) be denied (Doc. 77), to which no objections were filed. For the reasons that follow, the Magistrate Judge's Report and Recommendations (Docs. 80, 77) will be **ADOPTED**.

I. BACKGROUND

A. Facts

Jermeal White, a prisoner at the Southern Ohio Correctional Facility ("SOCF") in Lucasville, Ohio filed this pro se 42 U.S.C. § 1983 action alleging violations of his civil rights while in custody. White alleges that on August 17, 2019, Corrections Officers Tyler Parish and Wes Welch used excessive force against him when he was handcuffed and transferred to

[1] Documents 57 and 58 appear to be the same filing. The Court will refer to and cite Document 58.

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different cells. (Docs. 1, 27.) Specifically, "Wes Welch and Tyler Parish used extreme for[ce] on Plaintiff for no reason, from the cell of unit K2-1, all the way to the hallway on the walk to segregation" for "no explainable reason." (Doc. 27 at PageID 149.) White claims that "Wes Welch dislocated Plaintiff[']s right elbow, and Tyler Parish assisted Welch in the force by trying to break Plaintiff[']s left elbow and hand for no reason." (*Id.* at PageID 148.) White alleges that he was denied medical attention for his injuries when the nurse came to check on him and, after White told her of his injuries, she walked off. (Doc. 1 at PageID 11.) Plaintiff seeks injunctive relief and monetary damages. (*Id.* at PageID 12.)

B. Procedural History

White initiated this action on November 25, 2019. On April 3, 2020, the undersigned adopted the Magistrate Judge's recommendation that White's Complaint be dismissed with prejudice pursuant to 28 U.S.C. §§ 1951(e)(2)(B) and 1915A(b)(1) with the exception of White's Eighth Amendment claims against Defendant Cynthia Davis and the unidentified John Doe officers in their individual capacities. (Doc. 14 at PageID 84; Doc. 7 at PageID 55.) Subsequently, the Court granted White leave to amend his Complaint to identify previously unidentified defendants as Corrections Officers Wes Welch and Tyler Parish.[2] (Doc. 24; Doc. 27.) On February 11, 2021, the Court adopted the Magistrate Judge's recommendation that Davis's Motion to Dismiss be granted. (Doc. 30, 33.)

On April 28, 2021, White filed a Motion for Summary Judgment against Corrections Officer Parish. (Doc. 51.) On May 21, 2021, Corrections Officer Parish filed a Response in Opposition to Summary Judgment and Cross-Motion for Summary Judgment. (Doc. 58.) White filed a Response in Opposition (Doc. 63), and Corrections Officer Parish filed both a Response

[2] Corrections Officer Wes Welch filed an answer on January 7, 2022. (Doc. 76.)

in Opposition (Doc. 66) and a Reply (Doc. 68.) On June 17, 2021, White filed a Motion for Preliminary Injunction and Temporary Restraining Order (Doc. 65), to which Defendant Parish filed a Response in Opposition (Doc. 69).

C. January 7, 2022 Report and Recommendation

On January 7, 2022, the Magistrate Judge issued a Report and Recommendation recommending that Plaintiff's pro se Motion for Injunctive Relief (Doc. 65) be denied (Doc. 77). White asserted in his Motion for Injunctive Relief that he is being harassed and threatened by Defendants and asks the Court to transfer him to another prison. (Doc. 65). The Magistrate Judge found that White failed to establish the necessary elements for injunctive relief, including likelihood of success on the merits. (Doc. 77 at PageID 518.) Neither party filed objections to the Magistrate Judge's Report and Recommendation. As no Objections have been filed, the Report and Recommendation recommending Plaintiff's pro se Motion for Injunctive Relief be denied (Doc. 77) is **ADOPTED**.[3]

D. January 20, 2022 Report and Recommendation

On January 20, 2022, the Magistrate Judge issued a Report and Recommendation recommending that White's Motion for Summary Judgment be denied and Defendant Tyler Parish's Cross-Motion for Summary Judgment be granted. (Doc. 80.) The Magistrate Judge found that Corrections Officer Parish is entitled to judgment as a matter of law with respect to White's claims under the Eighth Amendment, because Plaintiff's contentions are "wholly unsupported." (Doc. 80 at PageID 530.) The Magistrate Judge relied heavily upon the video of White's escort to a new cell. (Doc. 58-1; 58-2.) She concludes the evidence demonstrates White

[3] On January 7, 2022, the Court received a "letter" asking the undersigned to transfer him to a new prison. (Doc. 78) The letter was received months after the Magistrate Judge's Report and Recommendation was issued. It does not raise any specific objections to the Magistrate Judge's Report and Recommendation but merely asks to be transferred to a new prison. It is therefore denied.

was escorted in "an unremarkable fashion" and "no force [was] used in this escort." (*Id.* at PageID 531.) The Magistrate Judge also found that White failed to demonstrate a violation of his Constitutional rights, and Corrections Officer Parish is entitled to qualified immunity. (*Id.* at PageID 532.)

White objected to the Magistrate Judge's Report and Recommendation (Doc. 81), and Corrections Officer Parish filed a Response.[4] (Doc. 82.) For the reasons that follow, the Court will **OVERRULE** White's Objections and **ADOPT** the Report and Recommendation (Doc. 80).

II. LAW

Federal Rule of Civil Procedure 56 governs motions for summary judgment. Summary judgment is appropriate if "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). The movant has the burden of showing that no genuine issues of material fact are in dispute. *See Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 585–587 (1986); *Provenzano v. LCI Holdings, Inc.*, 663 F.3d 806, 811 (6th Cir. 2011). The movant may support a motion for summary judgment with affidavits or other proof or by exposing the lack of evidence on an issue for which the nonmoving party will bear the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–24 (1986). In responding to a summary judgment motion, the nonmoving party may not rest upon the pleadings but must "present affirmative evidence in order to defeat a properly supported motion for summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257 (1986).

[4] White filed a Motion to Supplement his Objections (Doc. 83), which the Court denies. The filing is redundant of arguments already raised. Nothing in the supplement changes the Court's conclusion that the Report and Recommendation should be adopted.

A court's task is not "to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Id.* at 249. "[F]acts must be viewed in the light most favorable to the nonmoving party *only* if there is a 'genuine' dispute as to those facts." *Scott v. Harris*, 550 U.S. 372, 380 (2007) (emphasis added); *see also E.E.O.C. v. Ford Motor Co.*, 782 F.3d 753, 760 (6th Cir. 2015) (*en banc*) (quoting *Scott*). A genuine issue for trial exists when there is sufficient "evidence on which the jury could reasonably find for the [non-movant]." *Anderson*, 477 U.S. at 252; *see also Shreve v. Franklin Cnty., Ohio*, 743 F.3d 126, 132 (6th Cir. 2014) ("A dispute is 'genuine' only if based on *evidence* upon which a reasonable jury could return a verdict in favor of the non-moving party.") (emphasis in original) (citation omitted). "Factual disputes that are irrelevant or unnecessary will not be counted." *Anderson*, 477 U.S. at 248. "The court need consider only the cited materials, but it may consider other materials in the record." Fed. R. Civ. P. 56(c)(3). Finally, when cross motions for summary judgment have been filed, "the court must consider each motion separately on its merits, since each party, as a movant for summary judgment, bears the burden to establish both the nonexistence of genuine issues of material fact and that party's entitlement to judgment as a matter of law." *In re Morgeson*, 371 B.R. 798, 800–01 (B.A.P. 6th Cir. 2007).

Magistrate judges are authorized to decide dispositive and non-dispositive matters pursuant to 28 U.S.C. § 636 and Rule 72 of the Federal Rules of Civil Procedure. The district judge must conduct a *de novo* review of a magistrate judge's recommendation on a dispositive motion. *Baker v. Peterson*, 67 F. App'x 308, 310 (6th Cir. 2003). "The district court need not provide *de novo* review where the objections are frivolous, conclusive or general." *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986) (per curiam) (cleaned up).

III. ANALYSIS

A. White's Objections

White objects to the Magistrate Judge's Report and Recommendation that his Motion for Summary Judgment be denied and Correction Officer Parish's Cross-Motion for Summary Judgment be granted. White argues the Magistrate Judge "did not fully address the facts of the video camera" and that Corrections Officer Parish and his partner "applied immediate extreme force when removing Plaintiff from the f[ir]st cell, and Defendant and his partners still proceeded with the extraction force process as they escorted Plaintiff all the way down the [...] hall-way bending Plaintiff['s] hands and arms with so much extreme force, to the second cell, and to the third cell." (Doc. 81 at PageID 536.) He also claims the medical report is not consistent with the video. Finally, White argues that the fact that use of force reports were prepared prove that excessive force must have been used in his extraction. As discussed below, White's arguments lack merit.

B. Eight Amendment Violation

White alleges his Eighth Amendment rights were violated during his cell transfer. As appropriately cited by the Magistrate Judge, "[t]he Eighth Amendment prohibition on cruel and unusual punishment protects prisoners from the 'unnecessary and wanton infliction of pain.'" *Barker v. Goodrich*, 649 F.3d 428, 434 (6th Cir. 2011) (citing *Whitley v. Albers*, 475 U.S. 312, 319 (1986)). "But not every shove or restraint gives rise to a constitutional violation." *Cordell v. McKinney*, 759 F.3d 573, 580 (6th Cir. 2014) (citing *Parrish v. Johnson*, 800 F.2d 600, 604 (6th Cir. 1986)). At times, "maintenance of prison security and discipline may require that inmates be subjected to physical contact actionable as assault under common law." *Id.* (citing *Combs v. Wilkinson*, 315 F.3d 548, 556 (6th Cir. 2002)). "Factors to consider in determining

whether the use of force was wanton and unnecessary include the extent of injury suffered by an inmate, 'the need for application of force, the relationship between that need and the amount of force used, the threat reasonably perceived by the responsible officials, and any efforts made to temper the severity of a forceful response.'" *Combs*, 315 F.3d at 556–57 (citing *Hudson v. McMillian*, 503 U.S. 1, 7 (1992) (cleaned up)).

To make out a claim under the Eight Amendment, the prisoner must satisfy both an objective and subjective component. *Cordell*, 759 F.3d at 580 (citing *Santiago v. Ringle*, 734 F.3d 585, 590 (6th Cir. 2013)). First, "[t]he subjective component focuses on the state of mind of the prison officials." *Id.* (citing *Williams v. Curtin*, 631 F.3d 380, 383 (6th Cir. 2011)). We ask "whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." *Id.* (citing *Hudson*, 503 U.S. at 7). Second, "[t]he objective component requires the pain inflicted to be 'sufficiently serious.'" *Id.* (citing *Williams*, 631 F.3d at 383). This component requires a "contextual" investigation, one that is "responsive to 'contemporary standards of decency.'" *Id.* (citing *Hudson*, 503 U.S. at 8). "While the extent of a prisoner's injury may help determine the amount of force used by the prison official, it is not dispositive of whether an Eighth Amendment violation has occurred." *Id.* at 580–81. "When prison officials maliciously and sadistically use force to cause harm, contemporary standards of decency always are violated ... [w]hether or not significant injury is evident." *Id.* (citing *Hudson*, 503 U.S. at 9).

1. White's Evidence

In this case, the parties take opposite views of what occurred during the extraction team's escort of White to a new cell. White maintains via his statements that "extreme" force was used against him for the entirety of being escorted to two different cells. He argues the fact that use of

force reports were prepared prove this, and he suggests the prison reports and/or medical report describing no injury may have been fabricated. White relies upon two "unsworn Declaration[s]" in which he describes the events of August 17, 2019. (White Decl. 1, Doc. 51-1; White Decl. 2, Doc. 63-1.) He describes:

> [E]xtreme force was immediately used against me for no reason by Tyler Parish and Wes Welch all the way from the cell to the hallway snapping my right elbow out of place and causing serious pain to my hands and arms. Also Defendant Tyler and Welch had mask[s] on covering their entire face so I cannot pin point w[h]ich one of them snapped my elbow out [of] place, but both of them did use very serious extreme for[ce] against me in this matter for no explainable reason.

(Doc. 51-1 at PageID 267.) He asserts "the use of force reports in this matter are fabricated and false" and he was "refused medical attention." (*Id.*) He states that the "video records will completely prove the facts of this declaration and my motion for summary judgment." (*Id.* at PageID 268.)

In responding to Defendant's Cross-Motion for Summary Judgment, White submitted a second "unsworn Declaration," which states that "the extraction team for no reason [. . .] used extreme force on me all the way from the cell on the walk in the hallway to J3-unit snapping my right elbow out of place." (Doc. 63-1 at PageID 451.) After he was searched and dressed, "immediate extreme force was applied on me again on the walk from J3-3 to J3-41, but before I was able to enter the cell Defendant placed me on the wall and bent my arms and hands all the way up to my back." (*Id.*) He claims that "[o]nce I entered the cell I told the staff and the nurse that I think my elbow was snapped out of place." (*Id.*) He "told the nurse and staff my injuries who were all standing in front of my cell" after the video ended. (*Id.*)

2. Correction Officer Parish's Evidence

On the other hand, Corrections Officer Parish contends a forced extraction was planned, but because White was cooperative, no force was used in the escort. In support of this position,

Corrections Officer Parish relies upon a video of the escort, which the Magistrate Judge found to be conclusive on the question of whether excessive force was used. (Docs. 58-1; 58-2).

The undersigned reviewed the thirteen-minute, thirty-second video of the escort of White to two different cells. (Doc. 58-1.) The video opens with Lieutenant Eaches introducing himself and the "five-man team" that was designated to escort inmate White to a new unit after White refused multiple orders to "cuff up" and move out of his cell. (Doc. 58-1:10–:30.[5]) Five officers and a nurse introduce themselves and state their role in the extraction: Officer King, negotiator; Officer Whitman, shield; Officer Welch, upper left; Officer Davis, lower right; Officer Justice, lower left, and Nurse Hart, medical. (*Id.* at :30–1:17.) Lieutenant Eaches then states the purpose of the escort was to get White to "cuff up" and move cell locations. (*Id.* at 1:17.)

The video tracks the extraction team walking down a flight of stairs and approaching White in his cell. Officer King approaches White's cell and speaks to White about coming out of his cell and being handcuffed. (*Id.* at 1:31–2:01.) White appears to be compliant. The rest of the extraction team approaches and stands in front of White's cell. An officer yells for White's cell to be opened, and White is handcuffed. (*Id.* at 2:01–3:01.) White being handcuffed is partially obscured by the location of the camera and officers standing in front of the cell. White is then escorted by two officers up the stairs. (*Id.* at 3:15.) Following this, the camera shows the officers walking down a hallway with White. An officer is stationed at each of White's elbows. There is low talking and the walk is quiet and uneventful. (*Id.* at 3:15–5:33.) The group then approaches a new unit, walks down a stairway, and White is escorted into a new cell, where he is uncuffed. (*Id.* at 7:15–8:12.) White is strip-searched while unhandcuffed

[5] All time estimates are approximate based upon the undersigned's review of the video.

and in the new cell and then given new clothing to change into, at which point he changes clothing and shows no indication of any injury to his elbow. White is compliant with officers' orders. (*Id.* at 8:12–9:46.) White is then re-handcuffed by officers from outside of the cell. (*Id.* at 9:46–10:35.) White's cell open and he is escorted upstairs, with officers again at each elbow. (*Id.* at 10:35–11:20.) The extraction team and White then travel down a stairwell, through a hallway and to White's new cell, where White is handcuffed outside the cell and his hands are held upwards behind his back. (*Id.* at 11:20–12:20.) An officer checks the cell, and White is then escorted into his new cell. (*Id.* at 12:30.) The cell door closes and Nurse Hart approaches the cell and asks, "You good?" to which White appears to give an affirmative response. (*Id.* at 12:37.) The video concludes.

In addition to the video, Corrections Officer Parish also relies upon the Ohio Department of Rehabilitation and Correction, Deputy Warden of Operations Review of Use of Force file. (Doc. 58-3 at PageID 392–417.) Reports and Medical Exam Reports were prepared by Corrections Officers Whitman, Davis, Parish, Welch, Justice, Cooper, Kim, Lieutenant Eaches, and Nurse Hart in response to the escort. (*Id.*) Corrections Officers Whitman and Davis each described White as compliant after the extraction team arrived. (Doc. 58-3 at PageID 397–400.) In her Medical Exam Report, Nurse Hart stated of White: "Pt. states 'I'm fine, no injuries'. States 'No' when asked if any treatment was needed[.]" (*Id.* at PageID 409.)

3. Analysis

Based on the evidence before it, White's position that extreme force was used against him for the entirety of his escort cannot be believed by a reasonable jury. The video shows an

uneventful cell transfer and the undersigned witnessed no evidence of force. The video is objective evidence that disproves "extreme force" was used against White for the entirety of his escort. Although at times the view of White is obstructed, the audio is clear the entire time, and there is no evidence of distress from White at any time. He does not cry out, yell, or complain of pain. He is compliant and cooperative. White shows no sign of injury when he demonstrates he can move his arms/elbow when he changes clothing for his strip search at the second cell. White also indicates that he is fine when the nurse approaches his cell at the conclusion of extraction.

The other record evidence also demonstrates this escort involved no use of force. Reports describe White as compliant and Nurse Hart reported White stated he had no injuries and did not need medical treatment. To the extent he believes documents were forged, he has submitted no evidence to support that theory. Thus, despite the limitations of the video, it certainly negates White's statement that extreme force was used on his for his entire escort, and there is no evidence undermining the credibility of the use of force reports prepared by Officers and the nurse at the prison.

Although self-serving testimony, such as White's declarations in this case, can create a genuine dispute of material fact, they fail to do so where they are "blatantly and demonstrably false." *Davis v. Gallagher*, 951 F.3d 743, 750 (6th Cir. 2020) (citing *Scott*, 550 U.S. at 380 (2007) (holding that a court, when determining whether there is a genuine dispute of material fact in a case, may ignore testimonial evidence when it is "blatantly contradicted" by video evidence; *see also CenTra, Inc. v. Estrin*, 538 F.3d 402, 419 (6th Cir. 2008) (citing *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1480 (6th Cir. 1989) (assuming as true on summary judgment the nonmoving party's version of events unless that version is "totally implausible")).

Here, the Court was presented with competitive narratives. But upon close inspection, no genuine dispute of facts exists. White's version of events—that extreme force was used against him for the entirety of his escort, causing his right elbow to snap out of place—is not plausible when considering the contrary video evidence, use of force reports, and medical examination report. Thus, the undersigned agrees with the Magistrate Judge's determination that "[t]here is no force used in this escort[,]" and White failed to establish his Eighth Amendment rights were violated. (Doc. 80 at PageID 531.)

C. Qualified Immunity

The Court also agrees that Corrections Officer Parrish is entitled to qualified immunity, and White failed to carry his burden that qualified immunity would not apply. The doctrine of qualified immunity shields government officials from civil damages provided that their conduct does not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). Qualified immunity provides immunity from suit, not simply a defense to liability. *Id.* To determine whether qualified immunity applies, courts apply a two-pronged test: (1) do the facts alleged, taken in the light most favorably to the party alleging the injury, establish a violation of a constitutional right, and (2) was the right clearly established at the time of the injury? *Saucier v. Katz*, 533 U.S. 194, 200–01 (2001), *overruled on other grounds, Pearson*, 555 U.S. 223. "An answer of 'yes' to both questions defeats qualified immunity, while an answer of 'no' to either question results in a grant of qualified immunity." *Haley v. Elsmere Police Dep't*, 452 F. App'x 623, 626 (6th Cir. 2011). Courts can examine either issue first based on which path will best facilitate the fair and efficient disposition of the case before it. *Pearson*, 555 U.S. at 242. Although qualified immunity is an affirmative defense,

"the burden is on the plaintiff to demonstrate that the official[] [is] not entitled to qualified immunity." *Silberstein v. City of Dayton*, 440 F.3d 306, 311 (6th Cir. 2006). Thus, the plaintiff bears the burden of proving both elements of the *Saucier* test. *See Chappell v. City of Cleveland*, 585 F.3d 901, 907 (6th Cir. 2009).

After reviewing all evidence in this case, the undersigned agrees with the Magistrate Judge's conclusion that the evidence does not establish Corrections Officer Parish used excessive force against White when he was escorted to a new cell. Thus, White failed to establish a violation of his Constitutional rights. As such, Corrections Officer Parish is entitled to qualified immunity.

IV. CONCLUSION

For the reasons set forth herein, the Court **ADOPTS** the Magistrate Judge's Report and Recommendation denying White's pro se Motion for Injunctive Relief. (Doc. 77.) The Court **OVERRULES** White's Objections (Doc. 81) and **ADOPTS** the Magistrate Judge's Report and Recommendation that White's Motion for Summary Judgment be denied and Defendant Parish's Cross-Motion for Summary Judgment be granted and White's claims against Defendant Parish be terminated (Doc. 80).

IT IS SO ORDERED.

Dated: March 30, 2022

Susan J. Dlott

Judge Susan J. Dlott
United States District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JERMEAL WHITE,

Plaintiff,

vs

WARDEN RON ERDOS, et al.,

Defendants.

Case No. 1:19-cv-1007

Dlott, J.
Bowman, M.J.

REPORT AND RECOMMENDATION

This civil action is now before the court on Plaintiff's motion for summary judgment (Doc. 86) and Defendant Corrections Officer Welch's cross motion for summary judgment (Doc. 90) and the Plaintiff's responsive memoranda. (Doc. 91).

I. Background and Facts

Jermeal White, an inmate in the custody of Ohio Department of Rehabilitation and Correction (DRC), alleges that on August 17, 2019, while incarcerated at the Southern Ohio Correctional Facility (SOCF), Corrections Officer Welch used excessive force against him. According to the complaint, Defendant Welch "used so much extreme force" on Plaintiff "for no reason at all." (Doc. 1, Complaint, PageId# 5). Then, according to Plaintiff, he "was refused medical attention." (Id. at PageId# 6). When Plaintiff was "in a new cell on constant watch after the use of force, the nurse and S.R.T came to [his] cell, Plaintiff told the nurse his injuries, the nurse just walked off." (Id.). Plaintiff is seeking a prison transfer by way of a permanent injunction and compensatory damages in the amount of $400,000.00 against each defendant jointly and severally. (Id. at PageId# 11).

Appendix B

The incident was captured on video by a planned use of force videographer, Corrections Officer Cooper, it is thirteen minutes and thirty seconds long. (Doc. 58, Ex. A; SOCF DCSF4959). In the video, Lieutenant Eaches opens by giving a brief of the situation to the videographer—detailing that this was a planned use of force to extract Plaintiff from his cell. (Doc. 58, Ex. A; SOCF DCSF4959 00:00-00:31). The extraction team then introduces themselves and specifies their role in the extraction—Corrections Officer King, negotiator; Corrections Officer Whitman, shield; Corrections Officer Parish, upper right; Defendant Welch, upper left; Corrections Officer Davis, lower right; Corrections Officer Justice, lower left; and Nurse Hart, medical. (Id.,Ex. A; SOCF DCSF4959 00:31-1:12). Lieutenant Eaches then comes back into the video frame to describe what is planned for this extraction. (Id., Ex. A; SOCF DCSF4959 1:12-1:22). The extraction team then walks to Plaintiff's cell. (Id., Ex. A; SOCF DCSF4959 10:22-1:39). Corrections Officer King, the negotiator, speaks to Plaintiff and asks if he is going to comply with orders to move cells to which Plaintiff states he will be compliant. (Doc. 58, Ex. A; SOCF DCSF4959 1:39- 1:56). Plaintiff is then cuffed by members of the extraction team. (Ex. A; SOCF DCSF4959 1:56- 2:56).

Following his removal from his cell, there is a largely unremarkable escort of Plaintiff to a different cell by the extraction team. (Doc. 58, Ex. A; SOCF DCSF4959 2:56-7:39). Plaintiff is then uncuffed, strip searched, and given different clothing. (Doc. 58, Ex. A; SOCF DCSF4959 7:39-9:35). Plaintiff is then cuffed and escorted to a third cell. (Doc. 58, Ex. A; SOCF DCSF4959 9:35- 11:34). Plaintiff is placed outside of the third cell and uncuffed while a member of the extraction team searches the third cell. (Doc. 58, Ex. A; SOCF DCSF4959 11:34-12:34). Nurse Hart then approaches the cell door and asks

Plaintiff if he needs medical attention; Plaintiff denies medical attention. (Doc. 58, Ex. A; SOCF DCSF4959 13:19-13:25). Lieutenant Eaches concludes the video of the planned use of force. (Doc. 58, Ex. A; SOCF DCSF4959 13:25-13:30).

II. Analysis

A. Standard of Review

Federal Rule of Civil Procedure 56(a) provides that summary judgment is proper "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." A dispute is "genuine" when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A court must view the evidence and draw all reasonable inferences in favor of the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The moving party has the burden of showing an absence of evidence to support the non-moving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

Once the moving party has met its burden of production, the non-moving party cannot rest on his pleadings, but must present significant probative evidence in support of his complaint to defeat the motion for summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248-49. The mere existence of a scintilla of evidence to support the non-moving party's position will be insufficient; the evidence must be sufficient for a jury to reasonably find in favor of the nonmoving party. *Id.* at 252.

B. Applicable Law

As detailed above, Plaintiff asserts that Corrections Officer Welch used excessive force against him in violation of his rights under the Eight Amendment. The Eighth

Amendment prohibition on cruel and unusual punishment protects prison inmates from the "unnecessary and wanton infliction of pain." *Barker v. Goodrich*, 649 F.3d 428, 434 (6th Cir. 2011) (quoting *Whitley v. Albers*, 475 U.S. 312, 319 (1986)). An Eighth Amendment excessive force claim has both a subjective and an objective component. *Cordell v. McKinney*, 759 F.3d 573, 580 (6th Cir. 2014). The subjective component focuses on "whether force was applied in a good faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." Id.; see *also Hudson v. McMillian*, 503 U.S. 1, 6, 112 S. Ct. 995 (1992). In making this inquiry, the Court must consider the need for the use of force; the relationship between that need and the type and amount of the force used; the threat reasonably perceived by the official; and the extent of the injury inflicted. *Hudson*, 503 U.S. at 7; *Whitley v. Albers*, 475 U.S. 312, 320 (1986).

On the other hand, the objective component of an Eighth Amendment excessive force claim requires that a plaintiff's injury or pain be "sufficiently serious" to offend "contemporary standards of decency." *Cordell*, 759 F.3d at 580; *Williams*, 631 F.3d at 383. As the Supreme Court of the United States has stated, not "every malevolent touch by a prison guard gives rise to a federal cause of action." *Hudson*, 503 U.S. at 9-10; *Rafferty v. Trumbull Cty.*, 915 F.3d 1087, 1094 (6th Cir. 2019). Rather, the Eighth Amendment protects prisoners only from that conduct which is "repugnant to the conscience of mankind" and excludes "de minimis uses of physical force." *Wilkins v. Gaddy*, 559 U.S. 34, 37-38 (2010) (quoting Hudson, 503 U.S. at 9-10). In addition, this Court has recognized how the Sixth Circuit gives deference to prison officials using force in maintaining institutional discipline and security. *See, e.g., Anderson v. Lawless*, S.D.

Ohio No. 2:17-cv-1057, 2017 U.S. Dist. LEXIS 209814, at *17 (Dec. 21, 2017) (citing *Combs*, 315 F.3d at 556-57). On occasion, the maintenance of prison security and discipline may require that inmates be subjected to physical contacts actionable as assault under the common law. *Pelfrey v. Chambers*, 43 F.3d 1034, 1037 (6th Cir. 1995). "Because prison officials must make their decisions in haste, under pressure, and frequently without the luxury of a second chance, we must grant them wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *Combs*, 315 F.3d at 557.

C. *Defendant Welch is entitled to judgment as a matter of law with respect to Plaintiff's claims under the Eighth Amendment*

In his motion for summary judgment, Plaintiff claims, *inter alia,* that while he was being escorted to another cell, "extreme force was used against Plaintiff for no reason by Defendant Welch." (Doc. 86 at 4). Plaintiff further asserts "Defendant Welch applied extreme force by escorting Plaintiff by his right wrist and right arm, bending and twisting Plaintiff's wrist and arm" while Corrections Officer Parish did the same to Plaintiff's left arm. (Id. at 5). Specifically, Plaintiff contends Welch and Parish "bent Plaintiff's arms and hands all the way up his back" snapping Plaintiff's right elbow out of place. (Id. at 6). Plaintiff states he did not cry or complain, because he did not want to make matters worse. (Id). When asked for medical attention, Plaintiff states he responded affirmatively. (Id. at 7). However, Plaintiff's contentions are wholly unsupported.

Defendant Welch asserts that there was no use of force in this matter. He further asserts that the video and declarations demonstrate that Plaintiff White was escorted in an unremarkable fashion. (Doc. 90, at 11; SOCF DCSF4959). The undersigned agrees.

As noted above, Plaintiff was escorted to a different cell by the extraction team. (Doc. 58, Ex. A; SOCF DCSF4959 2:56-7:39). He is then uncuffed, strip searched, and given different clothing. (Doc. 58, Ex. A; SOCF DCSF4959 7:39-9:35). Following this, Plaintiff is cuffed and escorted to a third cell. (Doc. 58, Ex. A; SOCF DCSF4959 9:35-11:34). Plaintiff is placed outside of the third cell and uncuffed while a member of the extraction team searches the third cell. (Doc. 58, Ex. A; SOCF DCSF4959 11:34-12:34). Plaintiff is then placed in the third cell, his hands are uncuffed, and the cuff port is closed and locked. (Doc. 58, Ex. A; SOCF DCSF4959 12:34-13:19). Nurse Hart then approaches the cell door and asks Plaintiff if he needs medical attention; Plaintiff denies medical attention. (Doc. 58, Ex. A; SOCF DCSF4959 13:19-13:25). Lieutenant Eaches concludes the video of the planned use of force. (Doc. 58, Ex. A; SOCF DCSF4959 13:25-13:30.

Nothing distinguishes this case from the claims against Defendant Parish, whose motion for summary judgment was granted by the Court. There is no force used in this escort. (Doc. 58, Ex. C; U of F Report, p.8, 15). As such, according to Defendants, at no point during the escort does Plaintiff complain of pain, nor does he ask for medical attention after he is placed in the third cell. Indeed, when asked by Nurse Hart if he needed medical attention, Plaintiff denied that he did. (Id.; Ex.C; U of F Report, p.18, 24).

In light of the foregoing, the undersigned finds that Plaintiff failed to establish any violation of his Eighth Amendment Rights. According, Defendant Welch is entitled to judgment as a matter of law in this regard.

D. Qualified Immunity

Assuming Plaintiff has met his burden of establishing a violation of his Eighth Amendment rights, which he has not, Defendant Welch is entitled to qualified immunity. The purpose of qualified immunity is to provide governmental officials with the ability "reasonably [to] anticipate when their conduct may give rise to liability for damages." *Davis v. Scherer*, 468 U.S. 183 (1984). Thus, a governmental official performing discretionary functions will be entitled to qualified immunity unless his actions violate "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, 2738 (1982). A governmental official is entitled to immunity if the facts alleged do not make out a violation of a constitutional right, or if the alleged constitutional right was not clearly established at the time of the defendant's alleged misconduct. *Pearson v. Callahan*, 555 U.S. 223, 129 S. Ct. 808 (2009). Once a defendant has raised the defense of qualified immunity, the plaintiff bears the burden of proof to show that the defendant is not entitled to that defense. *See Garretson v. City of Madison Heights*, 407 F.3d 789, 798 (6th Cir. 2005).

Here, as detailed above, there is no evidence that Defendant Welch used excessive force against Plaintiff. To the contrary, the evidence establishes that Plaintiff was cuffed and escorted to another cell without incident. As such, Plaintiff has failed to establish a violation of his constitutional rights. Accordingly, the undersigned finds that Defendant Welch is immune from Plaintiff's claim against him.

III. CONCLUSION

In light of the foregoing, **IT IS RECOMMENDED THAT** Plaintiff's motion for summary judgment (Doc. 86) be **DENIED;** Defendant Welch's cross motion for summary judgment (Doc. 90) be **GRANTED;** and Plaintiff's claims against Defendant Welch be **TERMINATED** and this case be **CLOSED.**

s/Stephanie K. Bowman
Stephanie K. Bowman
United States Magistrate Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JERMEAL WHITE,

Plaintiff,

vs

WARDEN RON ERDOS, et al.,

Defendants.

Case No. 1:19-cv-1007

Dlott, J.
Bowman, M.J.

NOTICE

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation ("R&R") within **FOURTEEN (14) DAYS** after being served with a copy thereof. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent's objections within **FOURTEEN DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn,* 474 U.S. 140 (1985); *United States v. Walters,* 638 F.2d 947 (6th Cir. 1981).