IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 17-cv-00884-CMA-STV

CHAYCE AARON ANDERSON,

Plaintiff,

v.

JASON SHUTTERS

Defendant.

DEFENDANT JASON SHUTTERS' MOTION FOR SUMMARY JUDGMENT PURSANT TO FED. R. CIV. P. 56

Defendant, Jason Shutters, through his Attorneys, Hall & Evans, LLC, submits the following as his Motion for Summary Judgment pursuant to Fed. R. Civ. P. 56, as follows:

D.C.Colo.7.1(A) Duty to Confer

Undersigned Counsel conferred with Counsel for the Plaintiff, via email on June 24, 2019. Plaintiff objects to the requested relief.

I. INTRODUCTION

Plaintiff initially filed the present matter generally alleging a violation of various Constitutional rights stemming from his arrest, trial and conviction for sexual assault. The Court dismissed most of Plaintiff's claims set forth in the Second Amended Complaint (*See generally*, Adoption of Magistrate's Recommendation, ECF No. 93). The only remaining claim is against Fort Collins Police Detective Jason Shutters, for excessive force pursuant to the Fourth

Amendment. This claim arises out of Plaintiff's handcuffing at the time of his arrest (ECF No. 93 at 11).

Detective Shutters seeks summary judgment on the Fourth Amendment claim as his actions were reasonable given the totality of the circumstances surrounding his arrest. Additionally, Plaintiff Anderson has no evidence of any injury rising above the level of being anything other than de minimis and there is no evidence the Plaintiff let Detective Shutters know the handcuffs were too tight, thereby abrogating any excessive force claim and allowing the application of qualified immunity.

II. ARGUMENT

A. The force used to arrest Plaintiff Anderson, was objectively reasonable under the Fourth Amendment

1. Plaintiff has the burden of proof to establish Detective Shutters' actions in effectuating Plaintiff's arrest were not objectively reasonable.

"Determining whether the force used to effect a particular seizure is objectively 'reasonable' under the Fourth Amendment, requires a careful balancing of 'the nature and quality of the intrusion of the individual's Fourth Amendment interests' against the countervailing governmental interests at stake." ***Graham v. Connor***, 490 U.S. 386, 396 (1989) citing ***Brower v. County of Inyo***, 489 U.S. 593, 596 (1989). "(T)he question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." ***Graham***, 490 U.S. at 396, citing ***Scott v. United States***, 436 U.S. 128, 137-39 (1978); ***Terry v. Ohio***, 392 U.S. 1, 21 (1968). "Our Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect [sic] it."

Graham, 490 U.S. at 396, citing ***Terry,*** 392 U.S. at 22-27. The proper application of the test for "reasonableness" pursuant to the Fourth Amendment "is not capable of precise definition or mechanical application." ***Graham***, 490 U.S. at 396 citing ***Bell v. Wolfish***, 441 U.S. 520, 559 (1979). Rather, "proper application requires careful attention to the facts and circumstances of each particular case…" ***Graham***, 490 U.S. at 396 citing ***Tennessee v. Garner***, 471 U.S. 1, 8-9 (1985)

"A particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with 20/20 vision of hindsight." ***Graham***,490 U.S. at 396 citing to ***Terry***, 392 U.S. at 22-27. A small amount of force such as grabbing the suspect and placing him in the patrol car, is permissible in effectuating an arrest under the Fourth Amendment. ***Cortez v. McCauley***, 478 F.3d 1108, 1128 (10th Cir. 2007) referring to ***Atwater v. City of Lago Vista***, 532 U.S. 318, 354-55 (2001) and ***Graham***, 490 U.S. at 396.

> Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers, *Johnson v. Glick*, 481 F.2d, at 1033, violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation."

Graham, 490 U.S. at 396-397.

2. Elements that Plaintiff cannot establish to show Detective Shutters' actions in effectuating Plaintiff's arrest were not objectively reasonable.

On August 28, 2015, Detective Shutters initiated a sexual assault investigation, involving Plaintiff Anderson (**Movant's Appx., pp. 1-4 Deposition of Jason Shutters, 24:22-25; 25:1-4, 24-25; 26:1-6 and p. 7-Fort Collins Police Services Report at SHUTTERS 021**). Detective

Shutters gathered the facts and authored a "41.1" otherwise known as a collection of nontestimonial evidence, for Plaintiff (**Movant's Appx., p. 5-6- Deposition of Jason Shutters, 28: 18-25; 29:1-5 and p. 8-Fort Collins Police Services Report at SHUTTERS 024**). The documents prepared by Detective Shutters were reviewed by Fort Collins Police Detective Tammy Tracy and Detective Shutters' Sergeant, to ensure the existence of probable cause for an arrest (**Movant's Appx., p 6- Deposition of Jason Shutters, 29:6-9**). Detective Shutters then met with an "on-call judge" who also reviewed the documents (**Movant's Appx., p. 6-Deposition of Jason Shutters, 29:9-13**). A determination was made by the reviewing Judge that probable cause existed for an arrest (**Movant's Appx., p. 6-Deposition of Jason Shutters, 29:10-13**).

On the same day, Detective Shutters responded to the 600 block of South Whitcomb, in Fort Collins, Colorado, where Plaintiff was located (**Movant's Appx., p. 8-Fort Collins Police Report at SHUTTERS 024**). Detective Shutters began to speak with Plaintiff Anderson about the sexual assault he was investigating (**Movant's Appx., p. 8-Fort Collins Police Report at SHUTTERS 024**). After Plaintiff Anderson indicated he did not want to speak without a lawyer being present, Detective Shutters informed Plaintiff Anderson he was under arrest (**Movant's Appx. p.8-Fort Collins Police Report at SHUTTERS 024, and audio recording at approximately 2:56, submitted as *Exhibit A***)[1].

Once the Plaintiff was told he was under arrest, Detective Shutters placed him into handcuffs (**Movant's Appx. p. 8-Fort Collins Police Report at SHUTTERS 024**). Detective Shutters asked Plaintiff if either of the cuffs were too tight (**Movant's Appx. p. 8-Fort Collins**

[1] ***Exhibit A*** will be conventionally filed with the court on Monday July 8, 2019. A copy will also be provided to Plaintiff's Counsel as well.

Police Report at SHUTTERS 024 and *Exhibit A* at appx. 4:30). Plaintiff responded, "no, they're fine." (**Movant's Appx. p. 8-Fort Collins Police Report at SHUTTERS 024, and *Exhibit A* at appx. 4:30**). No indication was ever provided by Plaintiff to Detective Shutters that the handcuffs were too tight (*Generally*, ***Exhibit A***).

Plaintiff was transported to the Fort Collins Police Station for processing by Fort Collins Officer Brandon Barnes (**Movant's Appx. p. 9-Fort Collins Police Report at SHUTTERS 007**). On the way to the station, Plaintiff complained to Officer Barnes about having wrist pain and that he had "severe nerve damage." (**Movant's Appx. p. 9-Fort Collins Police Report at SHUTTERS 007**). An ambulance was called which responded to the Fort Collins Police Station to exam the Plaintiff, and Plaintiff, at his request, was transported to Poudre Valley Hospital ("PVH") (**Movant's Appx. p. 9-Fort Collins Police Report at SHUTTERS 007**).

Plaintiff was admitted to the emergency department at PVH (**Movant's Appx. p. 13-UC Health Medical Records at Anderson 0016**). Upon his presentation, Plaintiff complained of bilateral wrist numbness from being handcuffed, and was worried he had severe nerve damage (**Movant's Appx. p.13-UC Health Medical Records at Anderson 0016**).

The Plaintiff was examined at PVH by Physician Assistant Erin Carnahan (**Movant's Appx. p. 13- UC Health Medical Records at Anderson 0016**). Mr. Carnahan conducted a physical examination of Mr. Anderson (**Movant's Appx. pp. 33 & 35-Deposition of Erin Carnahan, 30:10-12**). Based on the physical examination, Mr. Carnahan found no evidence of trauma, swelling or redness in Plaintiff's wrists (**Movant's Appx. pp. 35 to 36-Deposition of Erin Carnahan, 30:13-25; 31:1-6**). Additionally, no lacerations or abrasions were observed, (**Movant's Appx. pp. 36 & 37- Deposition of Erin Carnahan, 31:22-25; 32:1-5**), and Mr.

Carnahan also noted Plaintiff's wrists had a full-range of motion. (**Movant's Appx. p. 37-Deposition of Erin Carnahan, 32:6-9**). The final diagnosis was "disturbance of skin sensation", which is a descriptor used to identify a scratch (**Movant's Appx. p. 36-Deposition of Erin Carnahan, 31:7-19**). The differential diagnosis was "malingering" (**Movant's Appx. p. 34-Deposition of Erin Carnahan, 17:12-23**). Consistent with his examination and findings, Mr. Carnahan concluded that Mr. Anderson did not suffer any injury to his wrists (**Movant's Appx. pp. 38 & 39-Deposition of Erin Carnahan, 36:15-22; 37:2-7**). Furthermore, Mr. Carnahan did not agree with Plaintiff's assessment that he had "severe nerve damage" (**Movant's Appx. p. 40-Deposition of Erin Carnahan, 40:12-16**). No treatment was rendered (***See generally*, Movant's Appx. pp. 22 to 32-UC Health Medical Records, Anderson 013-0035**).

Since his visit to PVH, the Plaintiff believes he only received over the counter medication at Larimer County Jail, such as Advil, ibuprofen, or Tylenol (**Movant's Appx. pp. 41 & 42-Deposition of Plaintiff, 47:17-23**). No records exist which substantiate any medical treatment to Plaintiff's wrists.[2]

The reasonableness of Detective Shutter's interactions with the Plaintiff is viewed from the specific circumstances surrounding the arrest, which includes the investigation. ***Graham***, 490 U.S. at 396. Here, the investigation conducted by Detective Shutters and arrest of the Plaintiff was uneventful, and there are no facts to suggest otherwise (***See* Movant's Appx. pp. 2 to 9**). There

[2] Counsel for Detective Shutters acknowledges the Court's Practice Standards requiring identification of the evidentiary record, supporting this factual statement. In this instance, however, the support is the omission of any facts necessary to support Plaintiff's claims. It is, therefore, not possible to provide a pin-point citation. Detective Shutters also suggest it is the Plaintiff's burden to affirmatively establish he received medical treatment for his injury, other than treatment for a de minimis concern identified as a scratch.

was no scuffle, argument, or altercation between the Plaintiff and Detective Shutters. Upon Plaintiff's arrest, the handcuffs were placed on his wrists and Plaintiff acknowledged they were not too tight **(Movant's Appx. p. 8-Fort Collins Police Report at SHUTTERS 024 and *Exhibit A* at appx. 4:30**). The only use of force utilized in the handcuffing of Plaintiff, was the actual handcuffing. There is no case law or precedent to suggest the mere handcuffing of an individual, as a result of an arrest for sexual assault, was somehow unreasonable, particularly where the suspect does not even complain to the officer that the handcuffs are too tight.[3]

Furthermore, the lack of any injury or trauma whatsoever also suggests Detective Shutters' actions were reasonable (**Movant's Appx. pp. 35 to 36-Deposition of Erin Carnahan, 30:13-25; 31:1-6; pp. 36 & 37- Deposition of Erin Carnahan, 31:22-25;32:1-5; p. 37-Deposition of Erin Carnahan, 32:6-9; p. 36-Deposition of Erin Carnahan, 31:7-19; p. 34-Deposition of Erin Carnahan, 17:12-23; pp. 38 & 39-Deposition of Erin Carnahan, 36:15-22; 37:2-7; p. 40-Deposition of Erin Carnahan, 40:12-16;** and ***see generally*, pp. 22 to 32-UC Health Medical Records, Anderson 013-0035).** The only "harm" from the application of handcuffs, was a scratch. (**Movant's Appx. p. 36-Deposition of Erin Carnahan, 31:7-19).**

Accordingly, the evidence in this matter shows Detective Shutters' actions were reasonable given the circumstances and therefore no Constitutional violation exists.

[3] As suggested by other Circuits, simply handcuffing an arrestee in the course of an otherwise lawful arrest does not constitute excessive force. ***Buster v. City of Cleveland***, 2011 U.S. Dist. LEXIS 45003 at *10 citing ***Neague v. Cynar***, 258 F.3d 504, 508 (6th Cir. 2001).

B. It is Plaintiff's burden to establish any injuries were more than de minimis.

"Handcuffing inevitably involves some use of force [citations omitted] and it almost inevitably will result in some irritation, minor injury, or discomfort where the handcuffs are applied." ***United States v. Rodella***, 804 F.3d 1317, 1328 (10th Cir. 2015) citing ***Wertish v. Krueger***, 433 F.3d 1062, 1067 (8th Cir. 2006) and referring to ***Rodriguez v. Farrell***, 280 F.3d 1341, 1351 (11th Cir. 2002). As a result, "(a) claim of excessive force requires some actual injury that is not de minimis…" ***Cortez v. McCauley***, 478 F.3d 1108 at ¶ 25 (10th Cir. 2007). Red marks on a suspect's wrist, even if the marks are visible for days afterwards, will not support an excessive force claim. ***Id.***

1. Plaintiff cannot establish his injuries, if any, were anything other than de minimis.

Here, the only evidence suggests that if Plaintiff suffered any injury, it was a "disturbance of skin sensation" otherwise known as a scratch (**Movant's Appx. p. 36-Deposition of Erin Carnahan, 31:7-19**). No evidence of trauma, swelling, redness, lacerations, or abrasions were noted by the examining Physician's Assistant (**Movant's Appx. pp. 35 & 36, Deposition of Erin Carnahan, 30:10-25; 31:1-6; 31:22-25; 32:1-5**). Mr. Carnahan's assessment was that the Plaintiff did not suffer any injury to his wrists (**Movant's Appx., p. 38 & 39-Deposition of Erin Carnahan, 36:15-22; 37:2-7**).

The evidence in this matter establishes that if there was any injury, it was de minimis, and therefore not a Constitutional violation.

C. It is Plaintiff's burden to establish that Detective Shutters is not entitled to qualified immunity for any actions pertaining to Plaintiff.

Qualified immunity shields Detective Shutters from any damages claimed. *See* ***Harlow v. Fitzgerald***, 457 U.S. 800, 806 (1982). Qualified immunity affords public officials immunity from suit and exists to "protect them from undue interference with their duties, and from potentially disabling threats of liability." ***Elder v. Holloway***, 510 U.S. 510, 514 (1994) citing ***Harlow***, 457 U.S. at 806 (1982). It protects all governmental officials performing discretionary functions from civil liability as long as their conduct does not violate clearly established Constitutional rights of which a reasonable person would have known. ***Harlow***, 457 U.S. at 818.

Qualified immunity is not only a defense to liability; it provides immunity from suit. ***Mitchell v. Forsyth***, 472 U.S. 511, 526 (1985). "One of the purposes of immunity, absolute or qualified, is to spare a defendant not only unwarranted liability, but unwarranted demands customarily imposed upon those defending a long drawn out lawsuit." ***Siegert v. Gilley***, 500 U.S. 226, 232 (1991). "These burdens include distraction of officials from their governmental responsibilities, the inhibition of discretionary decision making, the deterrence of able people from public service, and the disruptive effects of discovery on governmental operations." ***Hannula v. City of Lakewood***, 907 F.2d 129, 130 (10th Cir.1990). Courts should, therefore, resolve the purely legal question raised by a qualified immunity defense at the earliest possible state in the litigation. ***Medina v. Cram***, 252 F.3d 1124, 1127-28 (10th Cir.2001); ***Albright v. Rodriguez***, 51 F.3d 1531, 1534 (10th Cir.1995).

1. Elements of qualified immunity

To overcome a claim of qualified immunity, the plaintiff first must establish "that the defendant's actions violated a constitutional or statutory right." ***Albright v. Rodriguez***, 51 F.3d

1531, 1534 (10th Cir. 1995); ***Wilson v. Layne***, 526 US. 603, 609 (1999). The plaintiff must come forward with specific facts establishing the violation. ***Taylor v. Meacham***, 82 F.3d 1556, 1559 (10th Cir. 1996).

If Plaintiff shows a violation of a constitutional or statutory right, he must demonstrate that the right was clearly established at the time of Defendants' alleged unlawful conduct. ***Albright***, 51 F.3d at 1534. "Ordinarily, in order for the law to be clearly established, there must be a Supreme Court or Tenth Circuit decision on point, or the clearly established weight of authority from other courts must have found the law to be as the plaintiff maintains." ***Medina v. City and Cnty. of Denver***, 960 F.2d 1493, 1498 (10th Cir. 1992), citing ***Stewart v. Donges***, 915 F.2d 572, 582–83, n.14 (10th Cir. 1990). There must also be a substantial relationship between the conduct in question and prior law that establishes that a defendant's actions were clearly prohibited. ***Hilliard v. City & Cnty. of Denver***, 930 F.2d 1516, 1518 (10th Cir. 1991) citing ***Hannula v. City of Lakewood***, 907 F.2d 129, 131 (10th Cir. 1990).

Clearly prohibited or "'[c]learly established' for purposes of qualified immunity mean that 'the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful, but it is to say that in the light of pre-existing [sic] law the unlawfulness must be apparent.'" ***Wilson v. Layne***, 526 U.S. 603, 614–15 (U.S. 1999) citing ***Anderson v. Creighton***, 483 U.S. 635, 639–40 (1987). The plaintiff need not establish a "'precise factual correlation between the then-existing law and the case at hand . . . .'" ***Patrick v. Miller***, 953 F.2d 1240, 1249 (10th Cir.1992) citing ***Snell v. Tunnell***, 920 F.2d 673, 699 (10th Cir. 1990).

In civil rights cases, a defendant's unlawful conduct must be demonstrated with specificity, however. ***Davis v. Gracey***, 111 F.3d 1472, 1478 (10th Cir. 1997). To promote judicial efficiency, "discovery should not be allowed until the court resolves the threshold question whether the law was clearly established at the time the allegedly unlawful action occurred". ***Workman***, 958 F.2d at 336 citing ***Siegert***, 500 U.S. 230.

Additionally, "(i)n this circuit…(t)o trigger liability for unduly tight handcuffs…the plaintiff must show…the officer's knowledge that the handcuffs were too tight." ***Zartner v. Miller***, 760 Fed. Appx. 558, 561 (10th Cir. 2019) (unpublished) (footnotes omitted,) referring to ***Cortez***, 478 F.3d at 1129 and ftnt. 24, and ***Scott v. Hern***, 216 F.3d 897, 911 (10th Cir. 2000). *See also* ***Fisher v. The City of Las Cruces***, 584 F.3d 888, 896 (10th Cir. 2009) referring to ***Rodriguez v. Farrell***, 290 F.3d 1341, 1352-53 (11th Cir. 2002) (concluding officer did not use excessive force when he handcuffed plaintiff's arm behind his back, despite the fact that handcuffing led to eventual amputation of one arm, because officer did not know of plaintiff's preexisting injury). *See also* ***Silvan W. v. Briggs***, 309 Fed. Appx. 216, 224 (10th Cir. 2009) citing ***Vondrak v. City of Las Cruces***, 535 F.3d 1198, 1208-09 (10th Cir. 2008) "And because there is no evidence that Cory [Plaintiff]…notified the officers that his handcuffs were painful, he cannot maintain an excessive force claim based on unduly tight handcuffing."

As a public officer for the City of Fort Collins, Detective Shutters is entitled to qualified immunity.

2. Elements that Plaintiff cannot prove

Here, Plaintiff cannot overcome either element of this two-part burden. As argued above, the evidence in this matter establishes Detective Shutters' actions were objectively reasonable, given the circumstances of the investigation, and arrest, the lack of any trauma to Plaintiff's wrists, and Plaintiff's failure to tell Detective Shutters the handcuffs were purportedly too tight. Therefore, the Plaintiff cannot establish the existence of a constitutional violation.

There is no evidence to suggest Anderson ever informed Detective Shutters his handcuffs were too tight (*Generally*, ***Exhibit A***). To the contrary, Plaintiff acknowledge to Detective Shutters the handcuffs were "fine" (**Movant's Appx. p. 8-Fort Collins Police Report at SHUTTERS 024, and *Exhibit A* at appx. 4:30**). Plaintiff cannot maintain a Constitutional violation on this basis, and therefore Detective Shutters is entitled to qualified immunity.

Furthermore, there is no authority establishing any Constitutional violation, based on the evidence in this matter. To the contrary, the case law establishes that if Plaintiff suffered any injury (i.e.: a scratch), any such injury is *de minimis*, and therefore no Constitutional violation exists. ***Cortez*** 478 F.3d 1108 at ¶ 25 (10th Cir. 2007). Detective Shutters is therefore entitled to qualified immunity. ***Zartner***, *supra*, ***Vondrak***, *supra*.

III. CONCLUSION

WHEREFORE, Detective Shutters respectfully requests the Court grant his Motion for Summary Judgment, dismiss the remaining claim against him, enter an order finding Detective Shutters is entitled to qualified immunity, and for any other relief deemed just.

Dated this 5th day of July 2019.

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CERTIFICATE OF SERVICE (CM/ECF)

I HEREBY CERTIFY that on the 5th day of July 2019, I electronically filed the foregoing **DEFENDANT JASON SHUTTERS' MOTION FOR SUMMARY JUDGMENT PURSANT TO FED. R. CIV. P. 56** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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