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.

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Plaintiff Chayce Aaron Anderson ("Mr. Anderson"), through his undersigned counsel and pursuant to Federal Rule of Civil Procedure 56, hereby responds in opposition to Defendant Jason Shutters' ("Defendant") Motion for Summary Judgment. (Dkt. No. 128.) Triable issues of fact exist on the Fourth Amendment claim for which Defendant seeks summary judgment. The Court should therefore deny the Defendant's motion.

I. INTRODUCTION

Defendant violated Mr. Anderson's Fourth Amendment rights when Defendant used an inappropriate handcuffing method on Mr. Anderson and then squeezed the handcuffs excessively tight. It is undisputed that upon being handcuffed, Mr. Anderson informed multiple officers of his wrist pain. It is also undisputed that the Defendant's colleagues called an ambulance for Mr. Anderson after removing his handcuffs and instructed Defendant to stay away from Mr. Anderson.

Mr. Anderson has suffered from wrist pain ever since the arrest. Despite his inability to seek certain treatment due to his incarceration, Mr. Anderson has consistently taken over-the-counter pain medication to help manage his pain. Yet, he faces limitations in his day-to-day life due to the pain caused by Defendant's excessive handcuffing. Mr. Anderson respectfully seeks a single day in court before a jury to resolve the factual disputes properly remaining in this case.

II. STATEMENT OF FACTS

A. Defendant's handcuffing of Mr. Anderson on August 28, 2015

On August 28, 2015, Sergeant Kim Cochran ("Sgt. Cochran") approached Mr. Anderson while he was retrieving items from his vehicle. *See* Fort Collins Police Report 15-13817, Suppl. no. 4, Ex. 1 [SHUTTERS 011-013 at 011]; Ex. 2 [Anderson Dep. at 67:1-3]. Although Sgt. Cochran knew that an arrest warrant for Mr. Anderson had been signed at the time she made contact with him, she did not arrest him. She conceded that she wanted to wait until Defendant arrived. Ex. 1 at SHUTTERS 012. Sgt. Cochran discussed an unrelated incident regarding damage to Mr. Anderson's vehicle, but did not give Mr. Anderson any indication that she had a warrant for his arrest. *Id.*; Ex. 3 [Cochran Dep. at 22:11-24].

A short time later, Officer Andrew Edmonds ("Officer Edmonds"), Detective Tammy Tracy ("Det. Tracy"), and Defendant arrived on the scene. Ex. 1 SHUTTERS at 012; Ex. 3 at 23:22-24. Defendant initiated a conversation with Mr. Anderson. Ex. 4 [Shutters Dep. at 34:7-11]; Dkt. 129, Audio recording at 1:47. Mr. Anderson believed that Defendant was there to speak to him regarding unrelated damage to Mr. Anderson's vehicle. Ex. 2 at 66:12-19. However, once Defendant informed Mr. Anderson that his questions did not pertain to the automobile accident, Mr. Anderson invoked his constitutional right to an attorney. Dkt. 129, Audio recording at 2:50.

Immediately thereafter, Defendant informed Mr. Anderson that he was under arrest. *See* Police Report 15-13817 Suppl. No. 9, Ex. 5 [SHUTTERS 019-026 at 024]; Dkt. 129, Audio recording at 2:57.

Defendant gave multiple verbal commands to Mr. Anderson, to which Mr. Anderson peacefully complied. Ex. 2 at 69:12-20; Ex. 4 at 38:2-12; Ex. 3 at 28:19-24. At all times during his arrest, Mr. Anderson was compliant and cooperative. Ex. 4 at 38:2-12. At no time did Mr. Anderson attempt to resist or flee. Ex. 3 at 28:19-24.

After going through standard procedures to ensure that Mr. Anderson had nothing dangerous on him—which he did not—Defendant began handcuffing Mr. Anderson. Dkt. 129, Audio recording at 2:59. Defendant admitted that the handcuffing method for the lowest level of impact is the twist-and-lock technique, which is used for cooperative and compliant arrests. Ex. 4 at 38:2-12; Ex. 3 at 12:8-13. However, Defendant conceded that he used the stand-and-cuff technique, which is a more secure technique, even though Defendant and Sgt. Cochran both maintain that Mr. Anderson was compliant and cooperative throughout the arrest. Ex. 4 at 43:15-19; Ex. 3 at 12:1-4, 28:19-24. Sgt. Cochran wrongly maintains in her reports that the twist-and-lock technique was used on Mr. Anderson, even though Defendant admitted he used the stand-and-cuff technique. Ex. 3 at 13:1-3.

Defendant used a recording device in his pocket to record the interaction. Ex. 4 at 36:10-24. No body cameras or any other type of audio and/or visual recording device was used to document the arrest. Ex. 4 at 35:16-22; Ex. 3 at 27:5; Ex. 6 [Edmonds Dep. at 17:18-23].

Shortly after placing the handcuffs on Mr. Anderson, Defendant asked Mr. Anderson whether the handcuffs were too tight, to which Mr. Anderson responded that they were not. Dkt.

129, Audio recording at 4:30. But then Defendant proceeded to tighten the handcuffs further before double locking[1] them. Dkt. 129, Audio recording at 4:34; Ex. 4 at 47:11-15. The cranking from the additional tightening of the handcuffs can be plainly heard in the audio recording. After quickly tightening and locking the handcuffs, Defendant handed Mr. Anderson off to Officer Edmonds for transport to the police station. Ex. 4 at 50:18-20.

B. Mr. Anderson's transport to, and time in, Fort Collins Police Department

Mr. Anderson was placed in Officer Edmonds car and was transported roughly 15 minutes to the Fort Collins Police Department ("FCPD"). Ex. 6 at 11:9-12; 20:4-5. Officer Edmonds admits that Mr. Anderson began complaining of wrist pain during the ride to the station, immediately after Defendant had handcuffed him. *Id*. at 20:18-20. Upon his arrival at the station, Mr. Anderson continued to make verbal complaints to the officers. Ex. 3 at 31:13-15; 32:17-24; Ex. 7 [Tracy Dep. at 17:5-7]. It is undisputed that Defendant was intentionally kept from being near and around Mr. Anderson. Ex. 3 at 39:10-13; 40:12-15; 41:13-16; 42:21-25.

Mr. Anderson was then placed alone in a room, and Det. Tracy removed the handcuffs to photograph Mr. Anderson's wrists. Ex. 7 at 17:22-24; 18:6-7; 20-23. Officers at FCPD called an ambulance for Mr. Anderson immediately following Det. Tracy's photographs. Ex. 7 at 21:8-10. Once the ambulance arrived, the emergency medical technicians ("EMTs") evaluated Mr. Anderson. *Id*. Mr. Anderson reported his serious wrist pain to the EMTs, and he was then transported to Poudre Valley Hospital ("PVH"). Ex. 8 [Lindeken Dep. at 12:17-23; 23:21-25]; Ex. 3 at 37:16-19.

C. Mr. Anderson's time at Poudre Valley Hospital

[1] Double locking prevents further tightening of handcuffs. Ex. 5 [SHUTTERS 019-026 at 024].

At PVH, Mr. Anderson was seen by a Physician Assistant, Erin Carnahan ("Carnahan"). Ex. 9 [Carnahan Dep. at 13:1]. Mr. Anderson's primary complaint was nerve pain in his wrists and numbness in his fingers. Ex. 2 at 48:9-16; Ex. 10 [PVH Medical Records Anderson 0013-0035 at Anderson 0015]. Carnahan, at the time that he saw Mr. Anderson, had no authority to make an independent medical diagnoses without the supervision of a physicians. Ex. 9 at 8:18-24. Carnahan admitted that there were no diagnostic tests available to Mr. Anderson that could have conclusively diagnosed nerve damage. *Id*. at 42:5-10. Based on the testing done on Mr. Anderson while at PVH, a nerve injury could not be diagnosed, despite Mr. Anderson's complaints of serious wrist pain and numbness.

D. Mr. Anderson's injuries resulting from Defendant's use of excessive force

Shortly after Defendant excessively tightened the handcuffs on Mr. Anderson, Mr. Anderson began feeling pain in his wrists. Ex. 11, Declaration of Chayce Anderson at ¶ 11. Immediately following removal of the handcuffs, Mr. Anderson exhibited indentations on his wrists and visible red marks. Ex. 12, Photos of Mr. Anderson's wrists [Shutters 040-045]. Mr. Anderson also experienced numbness in his fingers. Ex. 10 at Anderson 0020; Ex. 2 at 78:17-25; 79:1-13.

Since the arrest, Mr. Anderson has experienced and continues to experience intermittent, shooting pains in his wrists. Ex. 2 at 78:17-25; Ex. 11 at ¶¶ 26-28. These shooting pains are more pronounced and frequent in Mr. Anderson's left wrist. *Id*. ¶ 25.

Mr. Anderson has had limited means to obtain treatment for his ongoing serious wrist pain. Mr. Anderson has been transferred between several incarceration facilities since August 28, 2015. Ex. 2 at 45:16-21. At no time since August 28, 2015 has Mr. Anderson had an opportunity to seek

a diagnosis or treatment from a nerve specialist. Mr. Anderson has experienced varying medical protocols at the different facilities he has been incarcerated in since August 28, 2015. *Id*. at 65:9-10; 81:19-23. These inconsistencies have made it difficult for Mr. Anderson to seek the necessary treatment for his pain, and instead Mr. Anderson has had to use over-the-counter medication in order to mask his everyday pain. Mr. Anderson has made multiple verbal requests and complaints to nurses during his incarceration, but he has not received any diagnostic tests for his ongoing wrist and nerve pain. *Id*. at 81:19-23.

Because Mr. Anderson continues to experience intermittent, shooting wrist pain, he is limited in his daily activities. *Id*. at 78:17-25; Ex. 11 at ¶¶ 26-30. For example, Mr. Anderson cannot do any physical activities that strain his wrists, such as pull-ups and push-ups. Ex. 2 at 79:7-13; Ex. 11 ¶ 26. Further, based on Mr. Anderson's previous work history operating heavy equipment, the ongoing shooting wrist pain would preclude him from resuming such work. Ex. 2 at 78:12-25; Ex. 11 ¶ 30.

III. ARGUMENT

At the summary judgment stage, Defendant has the burden to show "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). "An issue of fact is 'material' if under the substantive law it is essential to the proper disposition of the claim." *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 670 (10th Cir. 1998). And a "dispute is 'genuine' if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Allen v. Muskogee, Okla.*, 199 F.3d 837, 839 (10th Cir. 1997). The Court "construe[s] the factual record and reasonable inferences therefrom in the light most favorable to the nonmovant." *Id*. at 839-40.

A. Fourth Amendment – Excessive Force

An excessive force claim has two elements: "(1) that the officers used greater force than would have been reasonably necessary to effect a lawful seizure; and (2) some actual injury caused by the unreasonable seizure that is not *de minimis*, be it physical or emotional." *Fisher v. City of Las Cruces*, 584 F.3d 888, 894 (10th Cir. 2009) (quoting *Cortez v. McCauley*, 478 F.3d 1108, 1129, n.25 (10th Cir. 2007)). Defendant argues that Mr. Anderson cannot show the required elements to establish that Defendant's actions were not objectively reasonable. (Dkt. 128, pg. 3.) To the contrary, the record plainly establishes that Defendant used greater force than reasonably necessary while arresting Mr. Anderson and that this excessive force caused him injury.

1. Defendant used greater force than reasonably necessary to effect a lawful arrest.

In deciding whether unnecessary force was used, courts look to the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. *Fisher*, 584 F.3d at 894 (quoting *Graham v. Connor*, 490 U.S. 386, 396 (1989)).

The *Graham* factors weigh in favor of Mr. Anderson's excessive force claim. Even if the first *Graham* factor weighs against Mr. Anderson, the second and third *Graham* factors overwhelmingly favor him. Indeed, Magistrate Judge Scott T. Varholak, prior to discovery, recommended that although the first *Graham* factor weighed against Mr. Anderson, the other two factors weighed in favor of his excessive force claim. (Dkt. 85, pg. 9.) With the benefit of discovery, these conclusions have only been strengthened.

For example, regarding the second *Graham* factor, it is undisputed that Mr. Anderson did not pose a threat to the safety of the officers or others. Indeed, multiple accounts support that Mr.

Anderson was completely compliant and cooperative during his arrest. Ex. 4 at 38:7-12; Ex. 3 at 28:19-24; Ex. 7 at 16:4-9. In fact, even before Mr. Anderson's arrest, FCPD determined him to be a low threat level. Ex. 4 at 14:4-13. Regarding the third *Graham* factor, it is undisputed that Mr. Anderson never resisted arrest and never attempted to flee. Ex. 4 at 38:2-6; Ex. 3 at 28:19-24; Ex. 7 at 16:4-9. Thus, Defendant's use of a high-impact handcuffing method and his subsequent excessive tightening of the handcuffs were not justified in light of Mr. Anderson's peaceful cooperation. Accordingly, because the *Graham* factors weigh heavily in Mr. Anderson's favor, Defendant is not entitled to judgment as a matter of law as to whether Defendant used greater force than would have been reasonably necessary.

2. Mr. Anderson suffered injuries caused by Defendant's unreasonably forceful handcuffing, which are greater than *de minimis*.

Contrary to Defendant's categorical dismissal of Mr. Anderson's injuries, there is a genuine dispute of material fact that Mr. Anderson suffered greater than *de minimis* injury. Nerve damage and ongoing pain, in addition to superficial marks, have been held to be greater than a *de minimis* injury. *Vondrak v. Las Cruces*, 535 F.3d 1198, 1208 (10th Cir. 2008); *Koch v. City of Del City*, 660 F.3d 1228, 1247 (10th Cir. 2011).

Immediately following removal of the handcuffs from Mr. Anderson, Mr. Anderson's wrists exhibited prominent red marks and indentations. Ex. 12. Additionally, Mr. Anderson complained multiple times to multiple officers of wrist pain and numbness. Ex. 7 at 19:14-15; 26:3-5; Ex. 3 at 32:17-33:15; Ex. 6 at 20:13-20. Now, nearly four years after the arrest, Mr. Anderson still experiences intermittent shooting wrist pains, which impact his daily life. Ex. 2 at 78:12-25. Mr. Anderson has never had any other wrist injuries, either before the handcuffing by Defendant or after. *Id*. at 80:2-13.

Further, an official diagnosis of nerve damage is not necessary to prove Mr. Anderson's excessive force claim. In *Kraus v. Ferrari*, for instance, plaintiff submitted evidence "that he had pain and numbness for some time that interfered with his grip and ability to do his job," and that he still had symptoms. Civ. A. No. 08-cv-02808-WDM-BNB, 2010 WL 3430839, at *6 (D. Colo. Aug. 30, 2010). On summary judgment, the court found that this evidence was sufficient to show an injury more than *de minimis*. *Id*. The court reasoned that even if there was no nerve damage, "a jury could find that Plaintiff sustained an injury sufficient to show that [the officer] used excessive force." *Id*.

Here, while Mr. Anderson has not had the ability to obtain treatment and diagnosis by specialists, he has consistently made complaints of wrist and nerve pain since the handcuffing by Defendant. He still experiences intermittent shooting wrist pain today, which affects his daily activities. As the court found in *Kraus*, such evidence permits a jury to find that Plaintiff sustained an injury sufficient to show Defendant used excessive force.

3. Defendant is not entitled to qualified immunity.

Defendant argues that he is entitled to qualified immunity. (Dkt. 128, pg. 9.) But qualified immunity is not available when (1) a defendant violates a constitutional right; and (2) the constitutional right was clearly established. *See Vondrak*, 535 F.3d at 1204. This inquiry overlaps with the excessive force analysis. *See, e.g. Paiva v. City of Reno*, 939 F. Supp. 1474, 1487 (D. Nev. 1996).

In *Vondrak*, the Tenth Circuit established that a plaintiff has a right to be free of excessively tight handcuffs. *White*, 2014 WL 3953135, at *4. Here, Defendant exceeded the boundaries of Mr. Anderson's clearly established right to be free of excessively tight handcuffs, and it would be clear

to a reasonable officer that this was so. *See, e.g., Saucier v. Katz*, 533 U.S. 194, 201 (2001) ("The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation.") The undisputed record demonstrates that Mr. Anderson was compliant and cooperative during his arrest. Yet, Defendant opted to use greater force than reasonably necessary when he used a high-impact method of handcuffing and excessively tightened the handcuffs after asking Mr. Anderson whether they were too tight. Ex. 4 at 43:15-19; Dkt. 129, Audio recording at 4:34; Ex. 11 ¶¶ 8-9. Mr. Anderson then complained about his wrist pain immediately to Officer Edmonds and complained further still to officers when he arrived at the FCPD facility. Ex. 6 at 19:22-20:1; Ex. 7 at 19:14-15; 26:3-5; Ex. 3 at 32:17-33:15; Ex. 6 at 20:13-20. This string of circumstantial evidence proves Defendant's knowledge. *See U.S. v. Santos*, 553 U.S. 507, 521 (2008) (explaining that knowledge is almost always proved by circumstantial evidence); *Santos v. Gates*, 287 F.3d 846, 852 (9th Cir. 2002) ("a jury's finding for a plaintiff in an excessive force case may unquestionably rest on inferences drawn from circumstantial evidence.").

Because Mr. Anderson has established both elements to secure denial of qualified immunity—*i.e.*, that his constitutional right to be free from excessive handcuffing had been violated and that this right was clearly established when it occurred—Defendant is not entitled to summary judgment. *White*, 2014 WL 3953135, at *3 (citing *Fisher*, 584 F.3d at 893) (internal quotation marks omitted).

CONCLUSION

On August 28, 2015, Mr. Anderson had a Constitutional right to be free from excessively tight handcuffs. It was clear to Defendant that he violated that right when he used a handcuffing

method that was inappropriate under the circumstances and then knowingly tightened and locked the handcuffs after asking Mr. Anderson if the handcuffs felt comfortable. Mr. Anderson's injuries are not de minimis—nearly four years after his arrest, Mr. Anderson still suffers from ongoing and activity-limiting wrist pain due to Defendant's conduct. The evidence demonstrates that, at a minimum, a genuine dispute exists about whether Defendant used excessive force on Mr. Anderson during the arrest. Mr. Anderson respectfully asks for his day in court to prove it.

Respectfully submitted this 26th day of July, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of July, 2019, a true and correct copy of the foregoing **PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** was e-filed with the Clerk of the Court using the CM/ECF system and such filing was sent electronically using the CM/ECF system to the following:

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