IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:17-CV-00884-CMA-STV

CHAYCE AARON ANDERSON,

Plaintiff,

vs.

JASON SHUTTERS,

Defendant.

PLAINTIFF'S SURREPLY TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Defendant makes several claims in his reply that are contradicted by the record. Mr. Anderson therefore states as follows:

A. There is objective medical evidence that Mr. Anderson suffered a more than de minimis injury.

Defendant claims that the physician assistant who saw Mr. Anderson "made a diagnosis" that he "suffered nothing more than a scratch." That claim is demonstrably false. First, the physician assistant rendered a final diagnosis of "disturbance of skin sensation" categorized under Code 782.0 in the ICD-9-CM.[1] *See* Movant's Appx. at Anderson 0013. Per ICD-9-CM Manual, Code 782.0, this diagnosis describes the following conditions: *anesthesia* (loss of feeling, numbness), *hyperesthesia* (increased sensitivity), *hypoesthesia* (decreased sensitivity, numbness), *paresthesia* (burning,

[1] International Classification of Diseases (ICD)-9-Clinical Modification (CM) was the current diagnosis system used in all venues of healthcare to report diagnoses until October 2015.

prickling, or tingling sensations). *See* ICD Code 782.0 (attached as Supplemental Ex. 1). Accordingly, the physician assistant reached a medical diagnosis that *precisely* matches the injuries about which Mr. Anderson complained. Defendant attempts to dismiss Mr. Anderson's injuries by referring to them as "a scratch," and in doing so misconstrues the record. The physician assistant testified only that a disturbance diagnosis *generally could* include a scratch—nowhere did the physician assistant state that in Mr. Anderson's case, he *did* have "nothing more than a scratch." Dkt. 133-9 at 13:22-25. If he did, scratches have their own diagnoses and ICD codes that were available to the physician assistant to utilize, but he did not.[2] To the contrary, the physician assistant concluded in the medical record that Mr. Anderson suffered from a condition that impacts pain and sensation in his wrist.[3]

Second, Defendant notably omitted that the physician assistant also found Mr. Anderson had paresthesia, which is numbness—a commonly-known symptom of nerve damage and a symptom of disturbance of skin sensation. Dkt. 133-10 at 3 ("Clinical Impression 1. Medical clearance for incarceration 2. Paresthesia"). And third, as noted, the physician assistant admitted he had no recollection of Mr. Anderson. Supplemental Ex. 2 at 9:17-24, 10:3-6, attached. So based on his review of his medical notes, the physician assistant could not say that Mr. Anderson did not have nerve damage. Dkt. 133-9 at 42:1-2, 13-14. He acknowledged that he was not able to perform diagnostic tests

[2] The ICD-9-CM categorizes superficial injuries under Codes 900-919. Therefore, if the diagnosis was for a superficial injury, which includes minor abrasions, the physician assistant would have used a very different code than the one submitted.

[3] Because the physician assistant testified that he had no recollection of Mr. Anderson or his case, any comments in his deposition that do not match his findings in the medical record—written contemporaneously with seeing Mr. Anderson—are inherently unreliable.

to determine whether Mr. Anderson had conclusively suffered nerve damage. Dkt. 133-9 at 42:3-14. Therefore, Defendant Shutters cannot say there is no evidence of injury or nerve damage based on the physician assistant's deposition—his diagnoses, in fact, completely contradict this contention. Mr. Anderson's continued reports of shooting pain and numbness in his wrists only reinforce the fact that his injury was more than de minimis.

B. Defendant's method of arrest was excessive.

Defendant claims that there is no evidence the method of arrest he used on a peaceful and compliant Mr. Anderson, the standing cuff method, was not "higher impact" than any other method. This misstates the record. Defendant himself admitted that the twist-and-lock method, by contrast to any other method, is "the lowest level of handcuffing technique that we have." Dkt. 133-4 at 38:4-6. He admits this method would be appropriate for a "cooperative" arrestee like Mr. Anderson who "wasn't resistive at all." Dkt. 133-4 at 38:2-6. And Defendant admits that instead of using the twist-and-lock method, as he assumed he used before listening to the audio recording of the arrest, he actually used the standing cuff method. Dkt. 133-4 at 43:11-19. Likewise, Defendant's assisting officer, Sgt. Cochrane, admits that the standing cuff method is "usually used for a higher level of control" and that, by contrast, the twist-and-lock is a "low-profile" method used for a "more compliant" arrestee. Dkt. 133-3 at 12:3-4; *id.* at 12:9-13; *id.* at 13:1-3.

The record is undisputed that Mr. Anderson was cooperative and compliant during the entirety of his arrest. Yet, the record is also undisputed that Defendant used a handcuffing method with a higher profile than needed to arrest a compliant arrestee like Mr. Anderson.

C. Defendant squeezed Mr. Anderson's handcuffs too tightly.

Defendant claims there is no evidence Defendant knew that he squeezed Mr. Anderson's handcuffs too tightly. He tries to paint the picture that he asked Mr. Anderson whether the handcuffs were too tight contemporaneous with an additional tightening. This is untrue. The audio of Mr. Anderson's arrest makes clear that Defendant squeezed the handcuffs tighter *after* he asked Mr. Anderson if the handcuffs were too tight. Defendant's attempt to refute plain audio evidence is revealing.

Dated this 19th day of August, 2019.

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CERTIFICATE OF SERVICE

The undersigned certifies that on August 19, 2019, a true and correct copy of the foregoing **PLAINTIFF'S SURREPLY TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** was served on the following counsel of record via the Court's CM/ECF e-file system:

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