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 OBJECTION TO THE AMENDED RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636(b)(1)(C) and Federal Rule of Civil Procedure 72(b)(2), Plaintiff Chayce Aaron Anderson ("Mr. Anderson"), by and through undersigned counsel, submits this Objection to the Amended Recommendation of United States Magistrate Judge (Dkt. 152).

CERTIFICATE OF CONFERENCE

Pursuant to D.C.COLO.LCivR 7.1(A), undersigned counsel for Mr. Anderson conferred with counsel for Defendant regarding this Objection. Defendant opposes the relief requested herein.

INTRODUCTION

The Amended Recommendation of United States Magistrate Judge ("Recommendation") was issued on November 19, 2019 (Dkt. 152) in response to Defendant Jason Shutters' ("Defendant") Motion for Summary Judgment (Dkt.128) and

the parties' subsequent briefing. (*See* Dkt. 133 (Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment); Dkt. 136 (Defendant's Reply in Support of Motion for Summary Judgment); Dkt. 137-1 (Plaintiff's Surreply to Defendant's Motion for Summary Judgment); Dkt. 146 (Order granting Plaintiff's Motion for Leave to File Surreply and accepting Dkt. 137-1); Dkt. 147 (Defendant's Sur-response).) The Recommendation recommends that Defendant's motion for summary judgment (Dkt. 128) be granted and that the above-captioned case be dismissed. (Dkt. 152 at 18.) In pertinent part, the Recommendation found that Mr. Anderson failed to establish either prong of the qualified immunity analysis, noting that "while excessive handcuffing may constitute excessive force, a plaintiff cannot prevail on an excessive force handcuffing claim unless either: (1) the plaintiff timely informs the officer that the handcuffs are too tight, or (2) the officer is otherwise made aware that the handcuffs are too tight." (Dkt. 152 at 9 (citing cases).) The Recommendation found that Mr. Anderson failed to inform Defendant that the handcuffs were too tight or that his wrists were in pain. It also found that Mr. Anderson failed to set forth specific facts or evidence to demonstrate that Defendant should have otherwise been aware of any problems with the handcuffs. (Dkt. 152 at 14-15.)

Construing the facts in the light most favorable to Mr. Anderson, a reasonable jury could conclude that Defendant was aware that the handcuffs he placed on Mr. Anderson were too tight because (1) Defendant further tightened the handcuffs on Mr. Anderson after asking Mr. Anderson if the handcuffs were too tight; (2) Mr. Anderson complained of wrist pain within mere minutes of the over-tightening; and (3) Defendant was kept away from Mr. Anderson following the arrest. These uncontroverted pieces of evidence support

the reasonable inference that Defendant knew that the handcuffs were too tight. Accordingly, whether Defendant knew or was otherwise made aware that the handcuffs were too tight is a fact dispute for the jury to decide. Mr. Anderson respectfully requests that this Court reject the Recommendation and deny Defendant's Motion for Summary Judgment.

LEGAL STANDARD

Under Fed. R. Civ. P. 72(b), "a party may serve and file specific written objections to the proposed findings and recommendations" "[w]ithin 14 days after being served with a copy of the recommended disposition." Fed. R. Civ. P. 72(b)(2). In resolving the objections, "[t]he district judge must determine de novo any part of the magistrate judge's disposition that has been properly been objected to." *Id.* at 72(b)(3); *see Summers v. State of Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991) ("De novo review is statutorily and constitutionally required when written objections to a magistrate's report are timely filed with the district court."). "The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions." Fed. R. Civ. P. 72(b)(3).

ARGUMENT

I. Whether Defendant Knew or Was Made Aware of Mr. Anderson's Wrist Pain is a Disputed Material Fact.

As the summary judgment movant, 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). The Court must "construe the factual record and reasonable inferences therefrom in the light most favorable to the nonmovant." *Allen v.*

Muskogee, Okla., 199 F.3d 837, 839-40 (10th Cir. 1997). Indeed, "this usually means adopting … the plaintiff's version of the facts." *Todd v. Montoya*, 877 F. Supp. 2d 1048, 1087 (D.N.M. 2012) (citing *Scott v. Harris*, 550 U.S. 372, 378 (2007)).

In excessive force cases, the Tenth Circuit precludes a finding of qualified immunity where either the officer ignored timely complaints or was otherwise made aware that the handcuffs were too tight. *Vondrak v. City of Las Cruces*, 535 F.3d 1198, 1209 (10th Cir. 2012); *see* Dkt. 152 at 9 (acknowledging disjunctive standard). Knowledge is almost always proven by circumstantial evidence. *See U.S. v. Santos*, 553 U.S. 507, 521 (2008); *U.S. v. Barrow*, 448 F.3d 37, 44 (1st Cir. 2016) ("A jury may reasonably infer knowledge from 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.").

Here, the facts viewed in favor of Mr. Anderson support the inference that Defendant had knowledge the handcuffs he placed on Mr. Anderson were too tight.

The undisputed facts show that Mr. Anderson was compliant and cooperative during his arrest. (Dkt. 133 at 3 (citing Dkt. 133-4 at 38:2-12).) Yet Defendant chose to tighten Mr. Anderson's handcuffs further after Defendant initially placed the handcuffs on Mr. Anderson without issue. (Dkt. 133 at 4 (citing Dkt. 133-4 at 43:15-19; audio recording at 4:34; Dkt. 133-11 at ¶¶ 8-9).) Indeed, almost immediately after Defendant further tightened the handcuffs on Mr. Anderson, Mr. Anderson complained that he was suffering from wrist pain. (Dkt. 133 at 10; Dkt. 133-6 at 19:22-20:5 (transport took 10-15 minutes); *id.* at 20:13-20 (Mr. Anderson's complaints of wrist pain to Officer Edmonds).) Mr.

Anderson continued to complain to officers when he arrived at the Fort Collins Police Department ("FCPD") facility. (Dkt. 133-7 at 19:14-15 (photos taken by Det. Tracy because of Mr. Anderson's wrist pain complaints); Dkt. 133-7 at 26:3-5 (Mr. Anderson's complaints of wrist pain to Det. Tracy); Dkt. 133-3 at 32:17-33:15 (Sgt. Cochran informed of Mr. Anderson's wrist pain complaints by Det. Tracy).) Additionally, just 10-15 minutes later, upon arrival at the FCPD facility, Defendant was kept away from Mr. Anderson. (Dkt. 133 at 4; Dkt. 133-6 at 20:2-5; Dkt. 133-3 at 39:10-13; Dkt. 133-3 at 40:12-15; Dkt. 133-3 at 41:13-16; Dkt. 133-3 at 42:18-25).)

From these facts, viewed in the light most favorable to Mr. Anderson, a jury could find that Defendant knew or was made aware that Mr. Anderson's handcuffs were too tight. *See Vondrak v. City of Las Cruces*, 535 F.3d 1198, 1209 (10th Cir. 2012) (finding officers not entitled to qualified immunity on excessive force claim of unduly tight handcuffing where officers ignored timely complaints or were otherwise made aware that handcuffs were too tight). Indeed, Defendant asked Mr. Anderson about the tightness of the handcuffs prior to further tightening the handcuffs, but Defendant did not ask the same question after further tightening the handcuffs. In combination with the fact that Defendant was intentionally recording the interaction, it is reasonable to infer that Defendant knew this further tightening would cause Mr. Anderson pain. It is also undisputed that Mr. Anderson complained of wrist pain within minutes of the over-tightening. (Dkt. 152 at 3-4, 14.) Multiple officers testified that they were aware of Mr. Anderson's wrist pain complaints within minutes of the arrest. (Dkt. 133-7 at 26:3-5 (Mr. Anderson's complaints of wrist pain to Det. Tracy); Dkt. 133-3 at 32:17-33:15 (Sgt.

Cochran informed of Mr. Anderson's wrist pain complaints by Det. Tracy).) Thus, a jury could infer that Defendant was aware, within minutes after the over-tightening, that Mr. Anderson was complaining of wrist pain. Finally, it is undisputed that Defendant was kept away from Mr. Anderson upon arrival at the FCPD facility. A jury could reasonably infer from this fact that Defendant knew he had excessively tightened Mr. Anderson's handcuffs, injuring Mr. Anderson, and necessitating the separation between Defendant and Mr. Anderson.

Therefore, when viewing the facts in the light most favorable to Mr. Anderson, whether Defendant knew or was made aware that Mr. Anderson's handcuffs were too tight remains a disputed material fact precluding summary judgment. *See Bocchino v. City of Atlantic City*, 179 F. Supp. 3d 387, (D.N.J. 2016) ("Accordingly, [a] decision as to qualified immunity is 'premature when there are unresolved disputes of historical facts relevant to the immunity analysis.'") (quoting *Phillips v. City of Allegheny*, 515 F.3d 224, 242 n.7 (3d Cir. 2008)) (internal quotation marks omitted). The Recommendation found Defendant's knowledge to be critical to each prong of the qualified immunity analysis. *See Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 670 (10th Cir. 1998) ("An issue of fact is 'material' if under the substantive law it is essential to the proper disposition of the claim."). And a reasonable jury could find that Defendant had the requisite knowledge that Mr. Anderson's handcuffs were too tight. *See Allen*, 199 F.3d at 839 (finding a "dispute is 'genuine' if the evidence is such that a reasonable jury could return a verdict for the nonmoving party").

CONCLUSION

Defendant's knowledge of the tightness of Mr. Anderson's handcuffs and his knowledge of Mr. Anderson's contemporaneous complaints about wrist pain shows there remains a disputed material fact about whether Defendant knew he had excessively tightened Mr. Anderson's handcuffs. Mr. Anderson respectfully requests that the Court reject the Amended Recommendation of United States Magistrate Judge of November 19, 2019 (Dkt. 152) and deny Defendant's Motion for Summary Judgment (Dkt. 128).

Dated this 3rd day of December 2019.

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CERTIFICATE OF SERVICE

The undersigned certifies that on December 3, 2019, a true and correct copy of the foregoing **PLAINTIFF'S OBJECTION TO THE AMENDED RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE** was served on the following counsel of record via the Court's CM/ECF e-file system:

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