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' RESPONSE IN OPPOSITION TO PLAINTIFF'S OBJECTIONS TO THE MAGISTRATE'S RECOMMENDATIONS ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (ECF No.156)

Defendant, Jason Shutters, through his Attorneys, Hall & Evans, LLC, submits the following as his Response in Opposition to Plaintiff's Objections to the Magistrate's Recommendations on Defendant's Motion for Summary Judgment (ECF No. 156):

I. INTRODUCTION

Plaintiff provides objections to the Magistrate's Amended Recommendations, based on the notion Detective Shutters somehow knew the handcuffs applied to Mr. Anderson were too tight, and therefore he is not entitled to qualified immunity. His objections, however, are conclusory as there is no cited pertinent testimony or admissible evidence provided which supports any such notion. Furthermore, Plaintiff's objections do not address any of the cited, pertinent case law discussed by the Magistrate Judge, and no argument is presented addressing the *de minimis* nature of Plaintiff's alleged injuries. Plaintiff's objections should, therefore, be overruled.

II. ARGUMENT

A. The Magistrate's Recommendation correctly determined that Detective Shutters is entitled to qualified immunity.

"The Fourth Amendment protects individuals from 'unreasonable . . . seizures,' [citation omitted] and courts have long recognized that the reasonableness of a seizure depends not just on why or when it is made, but also on how it is accomplished." ***Fisher v. City of Las Cruces***, 584 F.3d 888, 894 (10th Cir. 2009) citing ***Graham v. Connor***, 490 U.S. 386, 395 (1989) and U.S. Const. *amend IV*. In particular, "(t)he inquiry focuses not on the officers' particular motivations, nor on the arrestee's subjective perception of the intrusion, but on 'whether the officers' actions are 'objectively reasonable in light of the facts and circumstances confronting them'" ***Fisher***, 584 F.3d at 894 citing ***Graham***, 490 U.S. at 395.

1. There is no evidence supporting Plaintiff's argument the handcuffs were "squeezed excessively".

Plaintiff argues Detective Shutters tightened the handcuffs "excessively", after first asking him if the handcuffs were too tight. Plaintiff infers the timing of the conversation creates some sort of question respecting Detective Shutters' conduct. The fatal point for Plaintiff's argument, however, is the undisputed fact that at no time during this discussion did he inform Detective Shutters about the handcuffs being "excessively tight". In other words, there is no evidence presented by the Plaintiff that Detective Shutters had any knowledge Plaintiff believed the handcuffs had been tightened excessively. As acknowledged by the Magistrate Judge, "In 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 v. McCauley***, 478 F.3d 1108,

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." The failure to establish any knowledge on the part of Detective Shutters regarding Plaintiff's complaints, precludes an excessive force claim pursuant to the Fourth Amendment. *See also* Magistrate's Recommendation, ECF No. 152 at 9.

Here, the Magistrate's Recommendation properly recognizes that the interaction between Detective Shutters and Mr. Anderson was civil. Detective Shutters, "gave multiple verbal commands to Plaintiff and Plaintiff complied" without incident (ECF No. 152 at 2, citing to ECF Nos. 128-1 at 10; 133-4 at 7 (38:3-12); 133-7 at 3 (16:4-9), and referring to ECF No. 129, Audio Recording at 3:12-6:17). The Court noted that after the handcuffs were placed on the Plaintiff, the "(Defendant asked Plaintiff if the handcuffs were too tight, to which Plaintiff responded, "No, that's fine, completely fine.'" (ECF No. 152 at 2-3, citing ECF Nos. 128-1 at 10; 129, Audio Recording at 4:30-32)). The Court properly analyzed the subsequent interaction between Mr. Anderson and Detective Shutters:

> In reviewing the Audio Recording, Defendant testified that he then checked the cuffs for tightness, found one to be a little bit too loose, 'so it sounded like there w[ere]…two more clicks' to tighten the lose cuff. [ECF No. 133-4 at 11 (47:1-15); and ECF No. 129, Audio

> Recording at 4:#1-39]. A few seconds later, Defendant asked another officer if they had a double lock, and explained to Plaintiff that Defendant was double locking the handcuffs so that they would not get tighter. [ECF No. 129, Audio Recording at 4:37-50; and ECF No. 128-1 at 10]. Defendant stated in his police report that after double locking, he again checked for tightness 'by inserting [his] index finger between the side of [Plaintiff's] wrist and the handcuff.' [ECF No. 128-1 at 10]

ECF No. 152 at 3.

The importance of this interaction is the fact a relatively lengthy opportunity existed for Plaintiff to complain about the handcuffs being too tight. A complaint, however, which never materialized. The Court correctly notes that the interaction between the Plaintiff and Detective Shutters "lasted between two and three more minutes after Defendant completed the handcuffing." (ECF No. 152 at 3). This interaction included: Detective Shutters asking that Mr. Anderson observe him locking Anderson's vehicle (ECF No. 152 at 3, citing ECF Nos. 128-1 at 10, and; 129, Audio Recording at 5:19-48); Detective Shutters asking Mr. Anderson if he had any questions, and Mr. Anderson responding he did not (ECF No. 152 at 3, citing ECF No. 129, Audio Recording at 6:15-6:17), and; Detective Shutters asking Mr. Anderson if there was a passcode for his phone, and Mr. Anderson confirming there was, but he would not provide it (ECF No. 152 at 3, citing ECF No. 129, Audio Recording at 6:43-53). At no point during these exchanges did Mr. Anderson complain about the handcuffs being too tight, nor is there any indication he was precluded from doing so. Plaintiff does not address this undisputed fact acknowledged by the Court in rendering its Recommendations: "Nor is there any indication that Plaintiff was somehow precluded from telling Defendant about the tightness of the handcuffing" (ECF No. 152 at 12). "Indeed, moments before the extra tightening, Defendant had asked Plaintiff about the tightness of the handcuffs, clearly evidencing a willingness to adjust them if plaintiff experienced

discomfort." (ECF No. 152 at 12). Furthermore, another approximately three minutes existed after the additional tightening of the handcuffs, where an unidentified officer could be heard making another statement to the Plaintiff, to which the Plaintiff responds, "Of course." (ECF No. 152 at 3, citing ECF No. 129, Audio Recording at 7:30-7:32). Based on this undisputed evidence, the Court correctly concludes the Plaintiff, "failed to establish either prong of his qualified immunity analysis" (ECF No. 152 at 8).

In rendering its Recommendations, the Court also correctly relied on ***Vondrak***, *supra*. And noted that "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." ECF No. 152 at 9, citing ***Vondrak***, 535 F.3d at 1208-09, and referring to ***Lewis v. Sandoval***, 428 F. App'x 808, 811-12 (10th Cir. 2012) (finding defendant officer was entitled to qualified immunity where the plaintiff did not complain of any discomfort from the handcuffs until he arrived at the police station…) In his objections, Plaintiff offers no analysis or refutation of the holding in ***Vondrak***. Furthermore, Plaintiff infers the mere knowledge of his complaints, such as when he was at the police station, is enough to overcome his burden. But, such an analysis is incorrect as there is no evidence presented that Detective Shutters *ignored* Plaintiff's complaints. *See* ECF No. 152 at 10 citing ***Osei v. Brooks***, No. 11-cv-01135-PAB-KMT, 2013 WL 1151619, at *9 (D. Colo. Mar. 19, 2013) ("[B]ecause [plaintiff] did not alert the police officers that his handcuffs were too tight, the police officers cannot be liable for ignoring his complaints.")

Additionally, Plaintiff's objections do not address the Court's findings that, "during the several minute interactions between Defendant and Plaintiff, Plaintiff never once complained

about tight handcuffs or wrist pain." (ECF No. 152 at 12). Mr. Anderson provides no evidence to refute the fact that he "never informed Defendant of any discomfort from the additional tightening, nor is there any other evidence suggesting that the Defendant might have been aware that the handcuffs were too tight." ECF No. 152 at 12, citing ***Nauman v. Utah Highway Patrol***, No. 2:14 -cv-00560-CW-DBP, 2016 WL 11188474 at *4 (D. Utah Aug. 31, 2016).

The Magistrate's Recommendation ultimately concludes, "(i)n short, during the two to three minutes of interaction and conversing between Plaintiff and Defendant after the additional tightening, Plaintiff never raised any complaints with Defendant." (ECF No. 152 at 14). "Plaintiff failed to notify defendant that the handcuffs were too tight and failed to present evidence that Defendant otherwise knew that the handcuffs were too tight. Plaintiff has not identified a case that clearly establishes a violation of Plaintiff's rights under such circumstances." ECF No. 152, ftnt. 6, referring to ***District of Columbia v. Westby***, 138 S. Ct. 577, 590 (2018) ("We have repeatedly stressed that courts must not define clearly established law to a high level of generality, since doing so avoids the crucial question whether the official acted reasonably in the particular circumstances that he or she faced."). "(t)here is no evidence that Plaintiff made a contemporaneous complaint to Defendant, which Defendant ignored, as required for an excessive force claim" (ECF No. 152 at 17 referring to ***Nauman***, 2016 WL 11188474 at *4. The Court was, therefore, correct in recommending that the Detective Shutters is entitled to summary judgment (ECF No. 152 at 17).

B. Plaintiff offers no argument refuting any notion he suffered a *de minimis* injury.

The Magistrate's Recommendation does not expressly address the *de minimis* nature of Plaintiff's alleged injury. The Recommendation, however, still acknowledges Plaintiff's burden to establish "some actual injury caused *by the unreasonable seizure* that is not de minimis" (ECF

No. 152 at 16) (emphasis in original). Plaintiff's objections do not venture into refuting any of the cited facts by the Magistrate. Specifically, that Plaintiff was transported to Poudre Valley Hospital by EMS. Despite complaints of wrist numbness and pain "no trauma [was] visualized." (ECF No. 152 at 4). In addition, the Plaintiff had "equal grip strength" E(CF No. 152 at 4, citing ECF No. 133-10 at 18). Once he arrived at Poudre Valley Hospital, he was examined by Physician Assistant Erin Carnahan (ECF No. 152 at 4). Mr. Carnahan noted that "Plaintiff's wrists had no visual evidence of trauma, and that there as 'no swelling[,] no erythema, no laceration, [and] no abrasion.'" (ECF No. 152 at 5, citing ECF No. 128-1 at 15, 38). Full range of motion of the distal appendages was noted (ECF No. 152 at 5, citing ECF No. 133-10 at 5). Mr. Carnahan's differential diagnosis included "malingering' (ECF No. 152 at 5, citing ECF No. 133-10 at 2). The final diagnosis was "disturbance of skin sensation." (ECF no. 152 at 5, citing ECF No. 133-10 at 2). "Mr. Carnahan testified that in his training and experience, 'disturbance of skin sensation' means 'an excoriation,' or 'scratch' – in other words, '[a]nything that disturbs the epidermis.'" (ECF no. 142 at 5, citing ECF No. 133-9 at 4 (13:22-25). The conclusion by PA Carnahan, was that the Plaintiff "did not suffer any injury to his wrists." (ECF No. 152 at 5, citing ECF No. 128-1 at 40-41 (36:20-22, 37:2-7).

To the extent the Magistrate's Recommendation addresses a *de minimis* injury, the Plaintiff does not refute any such findings.

III. CONCLUSION

WHEREFORE, Detective Shutters respectfully requests the Court overrule Plaintiff's objections, and 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 17th day of December 2019.

HALL & EVANS, L.L.C.

s/Mark S. Ratner
Mark S. Ratner
1001 17th Street, Suite 300
Denver, CO 80202
Telephone: (303) 628-3300
Facsimile: (303) 382-4325
Email: ratnerm@hallevans.com
ATTORNEYS FOR DEFENDANT JASON SHUTTERS

CERTIFICATE OF SERVICE (CM/ECF)

I HEREBY CERTIFY that on the 17th day of December 2019, I electronically filed the foregoing **DEFENDANT JASON SHUTTERS' RESPONSE IN OPPOSITION TO PLAINTIFF'S OBJECTIONS TO THE MAGISTRATE'S RECOMMENDATIONS ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (ECF No. 156)** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

Attorneys for Plaintiff:

Alexandra L. Lakshmanan
Christopher J. Casolaro
FAEGRE BAKER DANIELS LLP-DENVER
allie.lakshmanan@faegrebd.com
christopher.casolaro@faegrebd.com

Heather C. Burgess
FAEGRE BAKER DANIELS LLP-CHICAGO
heather.burgess@faegrebd.com

s/Annah Hillary, Legal Assistant to
Mark S. Ratner
of HALL & EVANS, L.L.C.
1001 17th Street, Suite 300
Denver, CO 80202
Telephone: (303) 628-3300
Facsimile: (303) 382-4325
Email: ratnerm@hallevans.com
ATTORNEY FOR DEFENDANT JASON SHUTTERS