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 REPLY IN SUPPORT OF OBJECTION TO THE AMENDED RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Plaintiff Chayce Aaron Anderson ("Mr. Anderson"), by and through undersigned counsel, submits this Reply in Support of Plaintiff's Objection to the Amended Recommendation of United States Magistrate Judge (ECF No. 156).

INTRODUCTION

Construing the facts and reasonable inferences therefrom in the light most favorable to Mr. Anderson, Defendant's knowledge that the handcuffs were too tight and the extent of Anderson's injury are genuine issues of material fact which preclude summary judgment. Accordingly, Mr. Anderson respectfully requests that this Court reject the Amended Recommendation and deny Defendant's Motion for Summary Judgment.

ARGUMENT

I. Defendant's Knowledge of Mr. Anderson's Wrist Pain Is A Genuinely Disputed Material Fact.

Viewing the facts and reasonable inferences drawn therefrom in the light most favorable to Mr. Anderson, Defendant's knowledge of the excessive tightness of Mr. Anderson's handcuffs and Mr. Anderson's resultant wrist pain remains a genuinely disputed material fact. Denial of Defendant's summary judgment motion is therefore proper.

As Mr. Anderson cited in his Objection, *Vondrak* provides the relevant standard—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. (*See* ECF No. 156 at 4 (citing *Vondrak v. City of Las Cruces*, 535 F.3d 1198, 1209 (10th Cir. 2012).)

Defendant argues in his Response Brief that it is an "undisputed fact" that Mr. Anderson never informed Defendant about the handcuffs being "excessively tight." (ECF No. 157 at 2.) But Defendant ignores the other critical undisputed facts which support an inference of knowledge or that Defendant was otherwise made aware that the handcuffs were excessively tight. It is undisputed that Defendant first applied the handcuffs and then asked Mr. Anderson if they were too tight. (ECF No. 152 at 2; ECF No. 157 at 3.) Following Mr. Anderson's response that they were fine, Defendant then further tightened the handcuffs. (ECF No. 152 at 2-3; ECF No. 157 at 3-4.) However, Defendant did not subsequently ask Mr. Anderson whether, after further tightening the handcuffs, the handcuffs were too tight. Additionally, it is undisputed that the interaction between Mr. Anderson and Defendant ended two to three minutes after Defendant further tightened the handcuffs. (ECF No. 152 at 3; ECF No. 157 at 4 (admitting that "[t]he Court correctly

notes that the interaction between [Mr. Anderson] and [Defendant] 'lasted between two and three more minutes . . . .").) It is also undisputed that Mr. Anderson was fully compliant during his arrest. (ECF No. 152 at 2; ECF No. 157 at 3.)

These undisputed facts, viewed in the light most favorable to Mr. Anderson, support multiple inferences, including that Defendant knew or was otherwise made aware that the further tightening of the handcuffs was actionably excessive. Indeed, Defendant asked Mr. Anderson about the tightness of the handcuffs after first placing the handcuffs on Mr. Anderson, but notably did not do so after further tightening the handcuffs. A jury could reasonably infer that Defendant did not ask Mr. Anderson about the tightness of the handcuffs after further tightening the handcuffs because he knew the handcuffs were excessively tight and did not want a response from Mr. Anderson to that effect captured on the audio recording. Because Defendant's knowledge properly remains a genuinely disputed material fact, summary judgment should be denied.

II. Mr. Anderson Suffered More Than a De Minimis Injury.

As Defendant acknowledges, the Amended Recommendation "does not expressly address" the degree of Mr. Anderson's injury. (*See* ECF No. 157 at 6.) The Amended Recommendation simply did not recommend a finding about the degree of Mr. Anderson's injury. Defendant implies that the Amended Recommendation's cited facts indicate a de minimis injury. To the contrary, the facts cited in the Amended Recommendation, and the reasonable inferences drawn therefrom, indicate Mr. Anderson suffered a greater-than-de-minimis injury. Indeed, Mr. Anderson has persisted in seeking treatment for his ongoing wrist pain, despite having limited medical resources available to him. (ECF No.

152 at 5.) And physician's assistant Mr. Carnahan "testified that there were no diagnostic tests capable of providing conclusive evidence of nerve damage that he could have ordered, and instead he would have had to send Plaintiff to a neurologist for a nerve conduction study." (ECF No. 152 at 5.) Yet Mr. Carnahan did not make such a referral to definitively confirm whether Mr. Anderson suffered nerve damage. For these reasons, and as explained more fully in Mr. Anderson's Response in Opposition to Defendant's Motion for Summary Judgment (ECF No. 133), Mr. Anderson suffered a greater-than-de-minimis injury. At a minimum, the extent of Mr. Anderson's injury properly remains a genuine dispute of material fact.

CONCLUSION

Defendant has not met his summary judgment burden. Contrary to the Amended Recommendation's recommendation that qualified immunity should be granted to Defendant, Defendant's knowledge or awareness that he excessively tightened the handcuffs on Mr. Anderson causing Mr. Anderson pain and injury remains a genuinely disputed material fact to be decided by a jury. Therefore, and for the reasons included in Plaintiff's Objection to the Amended Recommendation (ECF No. 156), Mr. Anderson respectfully requests that this Court reject the Amended Recommendation (ECF No. 152) and deny Defendant's Motion for Summary Judgment (ECF No. 128).

Dated this 31st day of December 2019.

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CERTIFICATE OF SERVICE

The undersigned certifies that on December 31, 2019, a true and correct copy of the foregoing **PLAINTIFF'S REPLY IN SUPPORT OF 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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