Case No. 22-5078

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

DEWAYNE HERNDON KNIGHTEN

Plaintiff/Appellee,

v.

AARON RAMSEY, et al.,

Defendant/Appellant.

On Appeal from the
United States District Court for the Northern District of Oklahoma
The Honorable Claire V. Eagan, United States District Judge
D.C. No. 4:21-cv-00186-CVE-JFJ

OPENING BRIEF OF DEFENDANT/APPELLANT AARON RAMSEY in his individual capacity

---

Michael Shouse, OBA No. 33610
Leana Glenn, OBA No. 34962
Tulsa County District Attorney's Office
218 W. 6th St., 9th Fl.
Tulsa, OK 74119
Telephone: 918-596-4890
Mshouse@tulsacounty.org
Lglenn@tulsacounty.org

October 31, 2022

oral argument is not requested

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

STATEMENT REGARDING PRIOR OR RELATED APPEALS

There are no prior or related appeals in this case.

STATEMENT REGARDING JURISDICTION

Dewayne Knighten ("Knighten") brought this action under 42 U.S.C. § 1983. The District Court had jurisdiction pursuant to 28 U.S.C. § 1331 and 1343.

On October 25, 2021, Defendants filed a Motion to Dismiss and the court entered an opinion and order on August 18, 2022. App. Vol. 1 at 66, 100.[1] The order dismissed all claims but for Knighten's claim for excessive force against Tulsa County Sheriff's Deputy Aaron Ramsey ("Ramsey"), in his individual capacity. Ramsey appeals pursuant to 28 U.S.C. § 1291 from the denial of qualified immunity. A denial of qualified immunity involving issues of law is a "final decision' within the meaning of 28 U.S.C. § 1291." *Mitchell v. Forsyth,* 472 U.S. 511, 530 (1985). On August 31, 2022, Ramsey timely filed a Notice of Appeal. App. Vol. 1 at 118.

STATEMENT OF THE ISSUES

1. Whether Ramsey is entitled to qualified immunity because he used *de minimis* force.
2. Whether Ramsey is entitled to qualified immunity when he used objectively reasonable force under the circumstances.

[1] As per 10th Cir. R. 28.1(A), this footnote is confirmation of undersigned counsel's acknowledgement of the citation convention.

3. Whether Ramsey is entitled to qualified immunity when no clearly-established precedent places the reasonableness of his conduct beyond debate such that every reasonable deputy would know that his conduct violated the constitution.

STATEMENT OF THE CASE

Knighten, appearing as a *pro se* state inmate, brought this action under 42 U.S.C. § 1983, alleging that Ramsey violated his civil rights during his pretrial detainment at the David L. Moss Criminal Justice Center ("DLM"). *See* App. Vol. 1 at 11.

Knighten's Allegations

On January 19, 2020, law enforcement officers arrested Knighten and booked him into DLM. App. Vol. 1 at 11-12. During Knighten's detainment at DLM, Ramsey was assigned to transport him from DLM to an outside medical provider. *Id.* at 11. Prior to his booking into the jail, Knighten alleges that he was in an "accident" in which he "broke and fractured both ankles." *Id.* Knighten did not see a medical provider before his subsequent arrest. *Id.*

On the date of Knighten's medical appointment, Ramsey transported Knighten by wheelchair to the jail's sally-port/"parking garage" where the transport

vehicle was located. *Id.* at 11-12; App. Vol. 2 at 26.[2] Knighten was secured by handcuffs and "black-boxed," but had no restraints on his legs. App. Vol. 1 at 11. Ramsey believed Knighten to be unharmed and had no knowledge of any injury Knighten may have suffered previously. *Id.* at 12.

While transporting Knighten to the sally-port, he started having "a heated exchange," with Ramsey. *Id.* at 91; [3] *See Id.* at 12; App. Vol. 2 at 26. Knighten continued to be verbally aggressive once the pair arrived at the transport vehicle. App. Vol. 2 at 26. Ramsey requested that Knighten stand and walk to the transport vehicle because a "curb" was located between them and the transport vehicle. App. Vol. 1 at 91; App. Vol. 2 at 26-27, 38. Knighten refused to exit the wheelchair. App. Vol. 1 at 11-12. There was only "six [feet]" between the wheelchair and the vehicle. App. Vol. 1 at 91; App. Vol. 2 at 26-27, 38. Knighten does not allege that he was incapable of walking to the car or standing by the curb. *See* App. Vol. 1 at 11-12. Knighten admitted that he could walk upon his booking into DLM. *Id.* at 90, 93.

---

[2] Undisputed assertions contained in a *Martinez* Report may '"serve as the basis for dismissal' on a 12(b)(6) motion." *Brewer v. Gilroy*, 625 F. App'x 827, 838 n.20 (10th Cir. 2015) (quoting *Gallagher v. Shelton*, 587 F.3d 1063, 1068 n.7 (10th Cir. 2009)); *Vestar v. Hudson*, 216 F.3d 1086 (10th Cir. 2000) (unpublished). In an attempt to comply 10th Cir. R. 10.4, Ramsey included in his Appendix only the main document itself and a select number of pages from the exhibits attached thereto.

[3] *See Plastic Container Corp. v. Continental Plastics of Oklahoma*, Inc., 607 F.2d 885, 906 (10th Cir. 1979) ("(T)he Tenth Circuit holds that . . . statements in briefs may be considered admissions in the court's discretion.").

Knighten continued to be non-compliant and hindered Ramsey in his assigned task. As Ramsey attempted to move the wheelchair near the curb, Knighten slammed his feet into the ground and prevented the wheelchair from moving any further. App. Vol. 2 at 27. Knighten alleges that Ramsey "assaulted" him when Ramsey "tried" to get Knighten to walk by "dumping him out of his wheelchair." App. Vol. 1 at 12. Knighten does not elaborate on what he means by the term "dumping." See *Id* at 11-12. However, Knighten admits in his "first message about the situation," Ramsey did not remove him from the wheelchair. *Id.* at 93 (Ramsey "tried to dump me [black-boxed out of my wheelchair.").[4]

At this time, Knighten continued to be verbally hostile and created disruption within the sally-port. App. Vol. 2 at 26; App. Vol. 1 at 91. Other law enforcement officers within the sally-port were forced to come over and address the disturbance. App. Vol. 2 at 26-27. The officers placed Knighten into the transport vehicle without further incident. *Id.*

Knighten alleges that Ramsey's actions caused him pain and "more damage . . . beyond his original injuries." App. Vol. 1 at 11. Knighten does not allege what "damage" actually occurred. *Id.* Knighten does state that he suffered "more agitation

[4] This is consistent with another of Knighten's grievances where he alleges that "officer Ramsey **tried** to throw me off the curb." App. Vol. 1 at 50 (emphasis added).

to a "crush injury," but does not provide what caused the "agitation" or further elaborate on the alleged "agitation." *Id.* at 12.

Procedural History

On April 26, 2021, Knighten filed his Complaint asserting various 42 U.S.C. § 1983 claims against the Tulsa County Sheriff's Office, Ramsey, and Sergeant Billie Byrd. App. Vol. 1 at 8. As Knighten appeared *pro se* and *in forma pauperis,* the District Court screened the Complaint pursuant to 28 U.S.C. § 1915A and 28 U.S.C. § 1915(e)(2)(b). *Id.* at 20. After reviewing the Complaint, the District Court ordered that a Special Report ("*Martinez* Report") be produced to "develop a record sufficient for the Court to ascertain whether there are any factual or legal basis for Knighten's claims." *Id.*

On October 25, 2021, the Tulsa County Sheriff's Office filed the *Martinez* Report, with certain portions filed under seal. *Id.* at 23, 26. On the same date, the above defendants filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). *Id.* at 67. The District Court dismissed all claims against the defendants except for Knighten's excessive force claim against Ramsey in his individual capacity. *Id.* at 117.

Ramsey had argued that the level of force alleged in the Complaint is *de minimis* and did not rise to a constitutional level. Ramsey further asserted that he was entitled to qualified because no constitutional violation had been committed and

it was not clearly established that his actions were unconstitutional. *Id.* at 74. The court denied Ramsey's assertion of qualified immunity. Importantly, the court construed Ramsey's *de minimis* force defense to be a *de minimis* injury argument, and stated that "the extent of any resulting injury from the use of the allegedly excessive force is only one factor in the Kingsley analysis." *Id.* at 108. The court found that "[a]ccepting these facts as true, it is at least plausible that Ramsey's use of force was 'not rationally related to a legitimate governmental objective or [was] excessive in relation to that purpose."' *Id.* (quoting *Kingsley v. Hendrickson,* 576 U.S. 389, 398 (2015) (internal citations omitted)). The court further stated:

> In February 2020, it would have been "clear enough" to a reasonable detention officer that it could be unlawful to use force against a pretrial detainee in a wheelchair who was "black-boxed and handcuffed" when the detainee posed no security threat or flight risk and there exists no apparent, much less legitimate, purpose for the use of force.

Id. at 109-10.

Ramsey timely filed his notice of appeal from the District Court's order on August 31, 2022. *Id.* at 118.

SUMMARY OF THE ARGUMENT

Ramsey is entitled to qualified immunity for three (3) reasons: (1) the force allegedly used by him was *de minimis,* and therefore, did not rise to the level of a constitutional violation; (2) the force used under the circumstances was objectively reasonable and in furtherance of legitimate government interests; (3) Knighten cited

to no case law set forth by the Supreme Court or this Court that would put Ramsey on notice that his alleged conduct of attempting to "dump" Knighten from the wheelchair constituted a violation of Knighten's constitutional rights.

Ramsey requested that Knighten stand up from the wheelchair when the pair reached a curb a few feet away from their transport vehicle. Knighten refused this request and prevented Ramsey from moving the wheelchair any further. Although Knighten alleges that Ramsey then attempted to remove him from the wheelchair, he did not fall to the floor. Knighten provided no further details related to the attempted "dumping." This level of force is incapable of stating a violation of anyone's constitutional rights. Finding that it could, diminishes the constitution to "a font of tort law," and would permit every unwanted or uncomfortable touch in a jail to provide a basis for a constitutional violation.

Even if it were held otherwise, qualified immunity still applies to protect Ramsey as he conducted himself as a reasonable deputy under the circumstances. The District Court had the duty to construe the events from the perspective of a reasonable officer under the circumstances, and it failed to do so. It overlooked how Knighten's defiant conduct impeded Ramsey from completing his legitimate goal of transporting the detainee to the vehicle, and then to his medical appointments. Additionally, force is implicit in the pushing of a wheelchair and more force would necessarily be needed when the rider prevents the wheelchair from moving any

further. Although a higher level of force was warranted, Ramsey used no more force that what was necessary under the circumstances to get Knighten's wheelchair to the transport vehicle.

Lastly, law enforcement officers are entitled to qualified immunity when the law does not clearly establish that their alleged conduct is unconstitutional. Knighten provided no case law even remotely related to the facts at hand. Nor could he. Neither the Supreme Court nor this Court Circuits have held that attempting to remove, or succeeding in removing, a person out of a wheelchair violates a person's constitutional rights. The District Court erred by broadly defining the conduct in such a way that it deprived Ramsey of "fair notice as to what constitutes unreasonable and unlawful behavior." *Mayfield v. Bethards*, 826 F.3d 1252, 1258 (10th Cir. 2016).

Accordingly, Knighten failed to adequately allege a viable Fourteenth Amendment violation or that the right allegedly violated was clearly established at the time. Thus, Ramsey is entitled to qualified immunity as a matter of law.

STANDARD OF REVIEW

This Court reviews "de novo the denial of a motion based on qualified immunity." *See Tonkovich v. Kansas Bd. of Regents*, 159 F.3d 504, 516 (10th Cir. 1998). A denial of qualified immunity involving issues of law is a "'final decision' within the meaning of 28 U.S.C. § 1291." *Mitchell v. Forsyth,* 472 U.S. 511, 530

(1985). "In reviewing a motion to dismiss, 'all well-pleaded factual allegations in the ... complaint are accepted as true and viewed in the light most favorable to the nonmoving party.'" *Brown v. Montoya,* 662 F.3d 1152, 1162 (10th Cir. 2011) (quoting *Moore v. Guthrie,* 438 F.3d 1036, 1039 (10th Cir. 2006)). However, "when the allegations in a complaint, however true, could not raise a [plausible] claim of entitlement to relief," the cause of action should be dismissed. *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 558 (2007).

A *pro se* plaintiff's complaint must be broadly construed under this standard. *Erickson v. Pardus,* 551 U.S. 89, 94 (2007); *Haines v. Kerner*, 404 U.S. 519, 520 (1972). The generous construction to be given the *pro se* litigant's allegations "does not relieve the plaintiff of the burden of alleging sufficient facts on which a recognized legal claim could be based." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). "This [C]ourt will not supply additional factual allegations to round out a plaintiff's complaint or construct a legal theory on a plaintiff's behalf." *Whitney v. State of N.M.*, 113 F.3d 1170, 1173–74 (10th Cir. 1997).

To survive a motion to dismiss asserting quality immunity, "this [C]ourt requires a plaintiff to 'allege sufficient facts that show—when taken as true—the defendant plausibly violated his constitutional rights, which were clearly established at the time of violation.'" *Wilson v. Montano*, 715 F.3d 847, 852 (10th Cir. 2013) (quoting *Schwartz v. Booker,* 702 F.3d 573, 579 (10th Cir. 2012)). "This [C]ourt has

discretion to decide which prong of the qualified immunity test to address first in light of the circumstances of each particular case." *Id.*

ARGUMENTS

Qualified immunity applies "to preserve the ability of government officials to serve the public good" and "ensure that talented candidates [are] not deterred . . . from entering public service." *The Est. of Lockett by & through Lockett v. Fallin*, 841 F.3d 1098, 1108 (10th Cir. 2016) (internal citations omitted). It is "the norm" and public officials enjoy a presumption of immunity when the defense is raised. *Lewis v. Tripp*, 604 F.3d 1221, 1225 (10th Cir. 2010) (quoting *Harlow v. Fitzgerald,* 457 U.S. 800, 807 (1982)). A plaintiff bears a "heavy two-part burden" to overcome that presumption. *Buck v. Albuqueque*, 549 F.3d 1269, 1277 (10th Cir. 2008). He or she must establish that (1) the defendant violated a constitutional right and (2) that such right was clearly established at the time of the defendant's alleged misconduct. *Kingsley v. Hendrickson,* 576 U.S. 400, 398 (2015). As Knighten failed to satisfy this burden, Ramsey is entitled to qualified immunity.

I. RAMSEY USE OF *DE MINIMIS* FORCE CANNOT PROVIDE THE BASIS OF A CONSTITUTIONAL VIOLATION

A *de minimis* application of force is insufficient to support a claim for excessive force. This principle is true whether the claim arises under the Fourth, Eighth, or Fourteenth Amendments. *Hudson v. McMillian*, 503 U.S. 1, 9–10 (1992); *Bell v. Wolfish,* 441 U.S. 520, 539 n.21 (1979); *also Crocker v. Beatty*, 995 F.3d

1232, 1251 (11th Cir. 2021), *cert. denied*, 142 S. Ct. 845 (2022). As above, Knighten's claim arises under the Due Process Clause of the Fourteenth Amendment due to his status as a pretrial detainee at the time of the alleged unconstitutional conduct. *See Est. of Booker v. Gomez*, 745 F.3d 405, 419 (10th Cir. 2014) ("It is therefore well-established that the Fourteenth Amendment governs any claim of excessive force brought by a 'pretrial detainee'—one who has had a 'judicial determination of probable cause as a prerequisite to [the] extended restraint of [his] liberty following arrest.'").

"The touchstone of due process is protection of the individual against arbitrary action of government." *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974). It prevents "governmental power from being used for the purposes of oppression." *Daniels v. Williams,* 474 U.S. 327, 331 (1986) (internal quotations omitted). "[T]he due process guarantee does not entail a body of constitutional law imposing liability whenever someone cloaked with state authority causes harm." *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 848 (1998). "Our Constitution deals with the large concerns of the governors and the governed, but it does not purport to supplant traditional tort law in laying down rules of conduct to regulate liability for injuries that attend living together in society." *Daniels*, 474 U.S. at 332. Indeed, the Fourteenth Amendment cannot be "a font of tort law to be superimposed upon whatever systems may already be administered by the States." *Paul v. Davis,* 424 U.S. 693, 701 (1976); *see also*

Wise v. Bravo, 666 F.2d 1328, 1333 (10th Cir. 1981) (quoting *Imbler v. Pachtman*, 424 U.S. 409, 417 (1976) and *Martinez v. California*, 444 U.S. 277, 285 (1980), *reh. denied*, 445 U.S. 920 (1980) (internal citation omitted)) ("Although a Section 1983 claim has been described as 'a species of tort liability', it is perfectly clear that not every injury in which a state official has played some part is actionable under that statute.").

To that end, "[t]here is, of course, a *de minimis* level of [force] with which the Constitution is not concerned." *Bell*, 441 U.S. at 539 n.21 (internal citations omitted); *see also Crocker v. Beatty*, 995 F.3d 1232, 1251 (11th Cir. 2021), *cert. denied*, 142 S. Ct. 845 (2022). Not every assault or battery to a pretrial detainee gives rise to a constitutional violation. *See Hudson v. McMillian*, 503 U.S. at 9 (Not "every malevolent touch by a prison guard gives rise to a federal cause of action.") (citing *Johnson v. Glick*, 481 F.2d 1028, 1033 (2nd Cir. 1973) ("Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers, violates a prisoner's constitutional rights."); *See also Jackson v. Buckman*, 756 F.3d 1060, 1067–68 (8th Cir. 2014) (citing *Askew v. Millerd*, 191 F.3d 953, 958 (8th Cir. 1999) ("Section 1983 is intended to remedy egregious conduct, and not every assault or battery which violates state law will create liability under it."). When the force alleged is found to be *de minimis*, no further analysis by the reviewing court is necessary. *See Nolin v. Isbell*, 207 F.3d 1253, 1258 (11th Cir. 2000).

Here, Knighten fails to allege that the force used by Ramsey rose above a *de minimis* level. He vaguely asserts that Ramsey "assaulted" him when Ramsey "tried" to get Knighten to walk by "dumping him out of his wheelchair." App. Vol. 1 at 12. Knighten does not elaborate on the vague term "dumped." *Id.* at 11-12.

Knighten does not allege in his Complaint that Ramsey's use of force caused him to fall to the floor. *Id.* Indeed, Knighten admits in his "first message about the situation," that Ramsey did not remove him from the wheelchair. *Id.* at 50, 93; App. Vol. 2 at 31.

During the alleged incident, Ramsey never made physical contact with Knighten's person. *See* App. Vol. 1 at 11-12. This matches with Knighten's allegation of "assault." "An actor is liable for assault if he or she 'acts intending to cause a harmful or offensive contact, ... or an imminent apprehension of such a contact,' and 'the other [person] is thereby put in such imminent apprehension.'" *Berglund v. Pottawatomie Cnty. Bd. of Cnty. Comm'rs*, 350 F. App'x 265, 274 (10th Cir. 2009) (unpublished); *see also* OUJI Civ. Inst. 19.1.

From the facts pled, it is entirely unclear how exactly Ramsey attempted to remove Knighten from the wheelchair. Did Ramsey simply attempt to move the wheelchair closer to the curb, which Knighten inferred an intent to dump? Did Ramsey raise the back of the wheelchair in order to help Knighten stand up? Since Knighten was capable of walking to the car or standing by the curb, App. Vol. 1 at

90, 93, it does not logically follow that attempting to remove him from the wheelchair would lead to any cognizable harm.

It appears that Knighten is alleging that Ramsey used excessive force by trying to help him stand up. Knighten's conclusory subjective inferences about Ramsey's intent are not entitled to any weight and must be disregarded. *See Frey v. Town of Jackson, Wyo.*, 41 F.4th 1223, 1233 (10th Cir. 2022) ("An allegation is conclusory if it states an inference without underlying facts or if it lacks any factual enhancement.").

In the underlying proceeding, neither Knighten nor the District Court cited to a case where a similar level of force was found to offend the Constitution. In fact, the District Court misunderstood Ramsey's *de minimis* force argument. The court construed Ramsey's argument to be a *de minimis* injury argument, and stated that "the de minimis principle defendants rely on to argue that this claim is not plausible does not carry the weight defendants place upon it. . . . The extent of any resulting injury from the use of the allegedly excessive force is only one factor in the Kingsley analysis." App. Vol. 1 at 108. Ramsey's argument here was on the *force* allegedly used in the attempt to remove Knighten from his wheelchair. *See Wilkins v. Gaddy*, 559 U.S. 34, 38 (2010) ("Injury and force, however, are only imperfectly correlated, and it is the latter that ultimately counts."). As above, there is a degree of force than can never serve as the basis of a constitutional violation regardless of the injury

suffered therefrom. Therefore, the District Court conflated *de minimis* injury with *de minimis* force.

This Court and others have held that similar or objectively higher degrees of force than what Knighten pled here were *de minimis* applications of force. *See Norton v. The City Of Marietta*, 432 F.3d 1145, 1156 (10th Cir. 2005) (grabbing an inmate around the neck and twisting it did not amount to a constitutional violation); *Reed v. Smith*, 182 F.3d 933 at *4 (10th Cir. 1999) (dismissing an excessive force claim where the officers allegedly grabbed an inmate, tried to ram him into a wall, and dragged him while walking through the prison.); *Rhoten v. Werholtz*, 243 F. App'x 364, 365, 367 (10th Cir. 2007) (unpublished) (affirming dismissal of plaintiff's allegations that correctional staff "slammed [him] against the wall[,] squeezed [his] nipples real hard, squeezed [his] buttocks, and pulled on [his] testicles real hard, causing him a great deal of discomfort and pain"); *Marshall v. Milyard*, 415 F. App'x 850, 853–54 (10th Cir. 2011) (unpublished) (dismissing excessive force claim based on allegations that corrections officer dug his fingernails into prisoner's arm without cause to do so resulting in redness and bruising); *De Walt v. Carter*, 224 F.3d 607, 610-11 (7th Cir. 2000), *abrogated on other grounds* (holding that shoving a prisoner into a doorframe, which resulted in bruising on his back, did not state a constitutional violation); *Boddie v. Schnieder*, 105 F.3d 857, 862 (2d Cir. 1997) (holding that bumping, grabbing, elbowing, and pushing a prisoner was "not

sufficiently serious or harmful to reach constitutional dimensions."); *Black Spotted Horse v. Else*, 767 F.2d 516, 517 (8th Cir. 1985) (pushing cubicle-cell wall onto prisoner's leg, causing bruises, was insufficient use of force to state a constitutional violation); *Nolin v. Isbell*, 207 F.3d 1253, 1255 (11th Cir. 2000) (holding that grabbing an arrestee from behind by the shoulder and wrist, throwing him against a van three or four feet away, kneeing him in the back and pushing his head into the side of the van, searching his groin area in an uncomfortable manner, and handcuffing him is a de *minimis* use of force); *Jackson v. Stubenvoll*, No. 16-cv-05746, 2022 WL 991950, at *4 (N.D. Ill. Mar. 31, 2022) (unpublished) (two shoves that caused pain and a bruised and swollen shoulder was *de minimis*); *Waterman v. Tippie*, No. 21-3097-SAC, 2022 WL 293233, at *1 (D. Kan. Feb. 1, 2022) (handcuffing an inmate too tight, slinging him into a wall, ramming him headfirst into a corner, and throwing him through a doorway with enough force that he landed on his face was not objectively harmful enough to state a constitution violation); *Olson v. Coleman*, 804 F. Supp. 148, 149-50 (D. Kan. 1992) (single blow to prisoner's head while escorting him into prison, causing contusion, was de minimis use of force.).

Likewise, attempting to "dump," or even succeeding in "dumping," someone from a wheelchair does not rise to the level of constitutional force. In *Jones v. Arnette*, an inmate alleged officials "forcefully removed him" from his "wheelchair"

and "nearly intentionally dumped him on the floor." 1:16-cv-01212-ADA-GSA-PC, 2018 WL 4897195, at *9 (E.D. Cal. Oct. 9, 2018) (unpublished). The court dismissed the claim, holding "at most, Plaintiff describe[ed] a de minimis use of force, which is excluded from constitutional recognition." *Id.* at *10.

Next, the plaintiff in *Ellis v. Bennett* stated that he used a wheelchair "following surgery for a broken femur." No. C 09–00247 SBA (PR), 2011 WL 1303654, at *2 (N.D. Cal. Mar. 31, 2011) (unpublished). The officer, upon realizing the plaintiff was not going to move out of his cell, "pull[ed] [his] wheelchair backwards" "so hard that it was pulled out from under him" causing him to fall "to the floor." *Id.* The court determined the incident "at most, could show a lack of due care," and therefore dismissed the excessive force claim. *Id.*

In *Armstrong v. Pelayo*, the plaintiff used a wheelchair because "he could not support his legs with his weight." No. 1:13–cv–01048–AWI–SKO (PC), 2014 WL 5093150 at*2 (E.D. Cal. Oct. 9, 2014) (unpublished). The officer responsible for sending the plaintiff to "the medical clinic . . . ordered [him] to stand up, [] squat and cough three times." *Id.* He "refused to comply," to which the officer responded by "pull[ing] him out of his wheelchair" causing to his to fall and suffer injuries to "his butt/or lower back." *Id.* The court, again, held for the defendant, finding that "forcefully yanking Plaintiff from his wheelchair amounts to a de minimis use of force." *Id.*

These cases help illustrate that a constitutional violation must rise to a "conscience-shocking" level or otherwise risk duplicating "traditional categor[ies] of common-law fault." *Lewis*, 523 U.S. at 848. Here, however, Knighten likely fails to even state a valid claim under state tort law, let alone a constitutional violation. While Ramsey pushed the wheelchair, he clearly had to use force to achieve his assigned task and legitimate penological goal of efficiently transporting Knighten to the outside medical provider. More force was warranted due to Knighten's non-compliance and resistance.

By holding that Ramsey's alleged conduct plausibly rises to the level of a constitutional violation, the District Court "trivialize[d]" and "grossly distort[ed] the meaning and intent of the constitution" and "the centuries-old principle of due process of law." *Daniels*, 474 U.S. at 330-32. If attempting to get an inmate to stand in order to carry out a necessary task is capable of stating a constitutional violation, what isn't? Accordingly, qualified immunity applies to bar Knighten's excessive force claim.

II. RAMSEY USED OBJECTIVELY REASONABLE FORCE

The District Court overlooked pertinent factual details present at the time of the alleged "assault" when it denied Ramsey qualified immunity. A detailed assessment of the factual circumstances demonstrate that Ramsey's use of force was objectively reasonable, which entitles him to qualified immunity.

"[T]he Due Process Clause protects a pretrial detainee from the use of excessive force that amounts to punishment." *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015). A pretrial detainee may make this showing by demonstrating that the actions were taken with an expressed intent to punish or by showing that the actions are not "rationally related to a legitimate nonpunitive governmental purpose" or that "they appear excessive in relation to that purpose." *Bell v. Wolfish*, 441 U.S. 520, 561 (1979). "Ensuring security and order at the institution is a permissible nonpunitive objective, whether the facility houses pretrial detainees, convicted inmates, or both . . . ." *Id.*

When an alleged use of force rises to the level of a constitutional violation, a pre-trial detainee can assert an excessive force claim by alleging facts demonstrating "the force purposefully or knowingly used against him was objectively unreasonable." *Kingsley*, 576 U.S. at 396-97.

> Courts "make this determination from the perspective of a reasonable officer on the scene, including **what the officer knew at the time**, not with the 20/20 vision of hindsight." The analysis must account for the "legitimate interests that stem from the government's need to manage the facility in which the individual is detained, appropriately deferring to policies and practices that in the judgment of jail officials are needed to preserve internal order and discipline and to maintain institutional security." The objective reasonableness standard "protects an officer who acts in good faith," and who is "often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving."

Rowell v. Bd. of Cnty. Comm'rs of Muskogee Cnty., Okla., 978 F.3d 1165, 1171 (10th Cir. 2020) (quoting *Kingsley*, 576 U.S. at 397, 399) (internal citations omitted) (emphasis added).

Ultimately, several factors "bear on the reasonableness or unreasonableness of the force used," including, but not limited to:

> the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff's injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting.

Kingsley, 576 U.S at 397.

Here, Knighten alleges that Ramsey was assigned to transport him to a medical appointment as part of his official job duties. App. Vol. 1 at 11. On the date of Knighten's medical appointment, Ramsey transported Knighten by wheelchair to the jail's sally-port/"parking garage" where the transport vehicle was located. App. Vol. 1 at 12; App. Vol. 2 at 26. A curb prevented Ramsey from taking Knighten all the way to the vehicle, so he stopped six (6) feet away. App. Vol. 1 at 91, App. Vol. 2 at 26, 27, 38. Accordingly, Ramsey requested that Knighten stand and walk to the transport vehicle. App. Vol. 1 at 11, 89; App. Vol. 2 at 26, 27, 38. Knighten refused to exit his wheelchair. App. Vol. 1 at 11. Knighten does not allege that he was incapable of walking to the car or standing by the curb. *See id.* at 11-12. Indeed, he admits that he could walk upon his booking into DLM. *Id.* at 90, 93. As Ramsey

attempted to move the wheelchair near the curb, Knighten slammed his feet into the ground and prevented the wheelchair from moving any further. App. Vol. 2 at 27; App. Vol. 1 at 91. However, the District Court provided:

> Knighten alleges he was "black-boxed and handcuffed" at the time, in no condition to walk on his "broken bones," and in no position to defend himself. Dkt. # 1, at 4, 7. And, while Knighten alleges he exchanged words with Ramsey, none of the allegations in the complaint suggests that Knighten posed a security threat, a flight risk, or a personal threat to Ramsey that would have called for the use of any force, much less that called for dumping Knighten from the wheelchair.

App. Vol. 1 at 107-08. This synopsis fails to consider the full factual scenario Ramsey encountered.

The Tulsa County Sheriff's Office has a legitimate need to efficiently manage DLM. *See Routt v. Howard*, 764 F. App'x 762, 769 (10th Cir. 2019) ("The effective management of the detention facility . . . is a valid objective that may justify imposition of conditions and restrictions of pretrial detention and dispel any inference that such restrictions are intended as punishment."). Clearly, inmates cannot be allowed to hinder jail staff members in the scope of the official duties and cause major disturbances within the jail. Ramsey was tasked with taking Knighten to the outside medical provider, and eventually was able to carry out his assignment. However, the task was not easy as Knighten was both verbally and physically non-compliant. *See* App. Vol. 1 at 11, 91; App. Vol. 2 at 26, 27, 38.

The use of some force is implicit in pushing a wheelchair, for without it, no movement could be had. Therefore, force necessarily had to be used to get Knighten to the transport vehicle. More force was warranted when Knighten refused to stand and slammed his feet into the ground preventing Ramsey from moving the wheelchair further. *See Nosewicz v. Janosko*, 754 F. App'x 725, 734 (10th Cir. 2018) (unpublished) ("Nosewicz refused to obey a command to leave the cell, such refusal would have justified Janosko's use of physical force to effectuate his removal from the cell. But, it would not have justified banging Nosewicz's head into the wall and hitting him with enough force to break his ribs. On the other hand, if Nosewicz physically resisted the attempt to move him, Janosko could have increased the level of force necessary to gain compliance, but no more.").

Viewing the situation through Ramsey's eyes, the request to stand was clearly reasonable under the circumstances. Knighten does not allege that he was incapable of walking to the car or standing by the curb and admitted he walked during his detainment at DLM. *See* App. Vol. 1 at 11-12, 90, 93. Even if Knighten did have "broken bones" at the time, that does make the request to stand for a moment patently unreasonable. Importantly, Knighten claims Ramsey did not know that Knighten was injured. *See Id.* at 12.

Although, a higher degree of force was authorized, Ramsey only applied a *de minimis* level. Therefore, Ramsey likely couldn't "temper" the amount of force used

as the force alleged is already of a *de minims* variety and only lasted for a few seconds. *See Rowell,* 978 F.3d at 1173.

Knighten does not detail in the Complaint how Ramsey physically interacted with the wheelchair, other than to allege that Ramsey attempted to remove him from it.[5] As questioned above, did Ramsey simply grab the wheelchair in manner with Knighten did not like? Did Ramsey raise the handles a few inches? Did Ramsey attempt to place the wheelchair over the curb with Knighten still seated inside? As above, Knighten's characterization of the event as an attempt to "dump" him from the wheelchair cannot rationally serve as the basis for inference of an intent to punish. Even if Knighten alleged there was a better way to complete the task in hindsight, "[o]fficers are not required to use alternative, less intrusive means if their conduct is objectively reasonable." *Est. of Ceballos v. Husk,* 919 F.3d 1204, 1214 (10th Cir. 2019).

Furthermore, Knighten presents vague and conclusory allegations concerning his alleged injury. Although Knighten alleges that Ramsey's actions caused him pain

[5] When factual allegations do allow a court to access the reasonability of an officer's actions, the claim should be dismissed. *See Thomas v. Rogers,* No. 1:19-cv-01612-RM-KMT, 2020 WL 2812724, at *6 (D. Colo. Apr. 27, 2020) (unpublished)*; Parks v. Taylor,* No. CIV-18-968-D, 2020 WL 1271587, at *5 (W.D. Okla. Mar. 17, 2020) (unpublished) (dismissing plaintiff's claim against a detention officer who allegedly shoved the plaintiff's face into a concrete wall and bent his wrist and hand without cause because plaintiff failed to provide sufficient facts to assess the objective reasonableness of the detention officer's conduct).

and "more damage . . . beyond his original injuries," he does not allege what "damage" actually occurred. App. Vol. 1 at 11. Following his trip to the hospital, Knighten states that he suffered "more agitation to a crush injury," but fails to provide what caused the "agitation" or further elaborate on the alleged "agitation." *Id.* at 12. "What would ordinarily be considered reasonable force does not become excessive force when the force aggravates (however severely) a pre-existing condition the extent of which was unknown to the officer at the time." *Rodriguez v. Farrell,* 280 F.3d 1341, 1353 (11th Cir. 2002). As above, Ramsey did not know the extent of Knighten's injuries.

Finally, although it does not appear from the face of the Complaint that Knighten posed an immediate personal threat to Ramsey, due to the fact the incident took place in the DLM garage, where other law enforcement officers were transporting inmates to or from DLM, it cannot be said Knighten posed no security threat—especially in light of the fact Knighten provided verbal and physical resistance while causing a major disturbance in the garage.

As pled, all we have here is Ramsey attempting to remove Knighten from the wheelchair, which had to occur to transport Knighten to the outside medical provider. Accordingly, on balance, the force allegedly applied by Ramsey was reasonably related to the legitimate governmental interests, and therefore, "dispel[s] any inference" that the action was intended as punishment. *See Bell,* 441 U.S. at 540.

Knighten fails to allege facts that show Ramsey's actions were "exaggerated," or excessive in response to the situation presented. *See id.* at 548.

As the force allegedly used by Ramsey was objectively reasonable under the circumstances, he is entitled to qualified immunity.

III. KNIGHTEN FAILED TO ALLEGE A VIOLATION OF CLEARLY-ESTABLISHED LAW

As discussed above, Ramsey used objectively reasonable *de minimis* force against Knighten. However, even if this Court were to hold otherwise, Ramsey is still entitled to qualified immunity as it has never been established that attempting to remove, or successfully removing, a non-compliant detainee from a wheelchair is excessive force. Definitively, Knighten offered **nothing** in response to Ramsey's assertion of the defense, thereby failing to satisfy the second prong of the qualified immunity analysis.

"The plaintiff's burden in responding to a request for judgment based on qualified immunity is to identify the universe of statutory or decisional law from which the [district] court can determine whether the right allegedly violated was clearly established." *Elder v. Holloway,* 510 U.S. 510, 514 (1994). While the court need not point to any prior authority which has precisely the same facts of this case in order to find clearly established law, existing precedent must "squarely govern" the case and "must have placed the statutory or constitutional question beyond debate." *Aldaba v. Pickens*, 844 F.3d 870, 877 (10th Cir. 2016).

The Supreme Court has issued "number of opinions reversing federal courts" when they fail to grant an officer qualified immunity. *White v. Pauly*, 580 U.S. 73, 137 S. Ct. 548, 551 (2017). The Court has consistently instructed judges "not to define clearly established law at 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." *Estate of B.I.C. v. Gillen,* 761 F.3d 1099, 1106 (10th Cir. 2014) (quoting *Plumhoff v. Rickard*, 572 U.S. 765, 779 (2014). "[A] defendant cannot be said to have violated a clearly established right unless the right's contours were sufficiently definite that any reasonable official in the defendant's shoes would have understood that he was violating it." *Plumhoff v. Rickard*, 572 U.S. at 778–79. "Qualified immunity gives government officials breathing room to make reasonable but mistaken judgments, and protects all but the plainly incompetent or those who knowingly violate the law." *Stanton v. Sims*, 571 U.S. 3, 6 (2013) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011)) (internal quotation omitted).

This is especially important in excessive force cases, where it is "sometimes difficult for an officer to determine how the relevant legal doctrine . . . will apply to the factual situation the officer confronts." *City of Tahlequah, Okla. v. Bond*, 142 S. Ct. 9, 12 (2021) (quoting *Mullenix v. Luna*, 577 U.S. 7, 11-12 (2015). Accordingly, "qualified immunity protects actions in the 'hazy border between excessive and acceptable force."' *Mullenix*, 577 U.S. at 18. In sum, "[t]he dispositive question is

'whether the violative nature of [the defendants'] *particular* conduct is clearly established.'" *Id.* at 12 (quoting *Ashcroft*, 563 U.S. at 742) (emphasis in original). Simply arguing a party has the abstract right to be free from excessive force is not enough. *See id.* It must be shown "by pointing to either a Supreme Court or Tenth Circuit decision, or the weight of authority from other courts, existing at the time of the alleged violation." *T.D. v. Patton*, 868 F.3d 1209, 1220 (10th Cir. 2017).

Here, Knighten wholly failed to cite to any authority even remotely related to the facts presented. The District Court, therefore, should have granted Ramsey qualified immunity.[6] *See Carabajal v. City of Cheyenne, Wyo.*, 847 F.3d 1203, 1208 (10th Cir. 2017) ("If the plaintiff fails to satisfy either part of the inquiry, the court must grant qualified immunity.)."

However, the District Court attempted to undertake Knighten's burden by citing two (2) cases in which the defendant had used unreasonable force. App. Vol. 1 at 110. However, the court erroneously relied on broad, non-specific language with cases and facts clearly distinguishable from the ones here, and concluded that:

> it would have been 'clear enough' to a reasonable detention officer that it could be unlawful to use force against a pretrial detainee in a wheelchair who was 'black-boxed and handcuffed' when the detainee posed no security threat or flight risk and there exists no apparent, much less legitimate purpose for the use of force.

[6] Notably, the District Court did not cite to any cases provided by Knighten in its qualified immunity analysis. *See* App. Vol. 1 at 105-111.

Id. at 109-110. Not so. As above, *de minimis* force is not actionable under the Constitution and Ramsey faced a far more complex factual situation than that set forth by the District Court.

To support its decision, the District Court cited to *Miller v. Glanz*, 948 F.2d 1562, 1567 (10th Cir. 1991) and a fourth circuit case, *Thompson v. Commonwealth of Virginia*, 878 F.3d 89, 100 (4th Cir. 2017). *Miller* involved a deputy who "kicked, choked, beat and stomped [plaintiff], and almost choking [sic] [plaintiff] to death" while having his ankles and hands cuffed. 948 F.2d at 1567. The only similarity between those facts and the case at hand is that the plaintiffs were handcuffed when they suffered the alleged injury. Physical batteries such as punching, kicking, and choking are not at issue here. In fact, Knighten did not allege Ramsey even touched him. App. Vol. 1 at 11-12. Additionally, Knighten claims that Ramsey made a single attempt to remove him from the wheelchair, which is clearly unlike the repeated beatings alleged in *Miller*.

Ramsey's actions were to further a legitimate government interest in transporting Knighten to his appointment all the while Knighten actively hindered, and made it difficult for Ramsey to complete his task. *See* App. Vol. 1 at 11; App. Vol. 2 at 27. The Complaint does not give rise to an inference that Ramsey attempted to remove Knighten from his wheelchair as a form of punishment. Quite the

opposite. It gives rise to an inference that Ramsey was attempting to carry out his assigned task.

The District Court also cited *Thompson*, an Eighth Amendment case in which the officers failed to buckle in an inmate before giving him a "rough ride." 878 F.3d at 100. The officers made multiple accelerations, sudden stops, and took sharp turns in order to injure the plaintiff. *Id.* at 94. The prisoner was restrained in a way that did not allow himself to protect himself. This led the plaintiff to smack his face multiple times against "the walls of the van" and the "steel mesh covering the windows" causing "bleeding and bruising on his forehead, hands, and arms." *Id.* at 94-95. The plaintiff repeatedly asked for help, but the rough ride continued. *Id.*

The facts further indicate the plaintiff "never verbally threatened the officers with violence and was never hostile in any way," but the officers still "fueled [the plaintiff's] fear for his safety by taunting and threatening him." *Id.* at 100. The defendants specifically mentioned the fact that the plaintiff had filed a number of grievances prior thereto and told him that "we know how to deal with inmates . . . who create problems." *Id.* at 95. Accordingly, the court held that a "rough ride" has "no relationship to any penological need to use force," and "the prospect that neither the victim nor the officer can prevent an instantaneous escalation to a life-or-death situation instills terror." *Id.* at 100. The actions of the officers therefore suggested a constitutional violation.

The facts are significantly different here. A "rough ride" does not further legitimate government interests. Conversely, transporting Knighten to his appointment does. App. Vol. 1 at 11. The plaintiff in Thompson was compliant, incapable of protecting himself, and continuously traumatized for a lengthy van ride where he smashed into the vehicle's wall and metal mesh countless times. Knighten was non-compliant, able to protect himself from any potential harm by standing or walking, and Ramsey only attempted to remove him from the wheelchair once. *Id.* at 11, 91. Further, even if *Thompson* was sufficiently factually similar to the instant case, a single case from another circuit cannot clearly establish the law in this Circuit. *See Bailey v. Twomey*, 791 F. App'x 724, 730 (10th Cir. 2019) (unpublished) ("[A] lone decision from another circuit court will [not] suffice to show that the law is clearly established.").

Additionally, it was well established in the Fourth Circuit that giving someone a "rough ride" violated the Eighth Amendment. *Thompson*, 878 F.3d at 103. The same is not true for excessive force allegations involving an attempted or successful removal from a wheelchair. In fact, cases with allegations of a defendant forcing a plaintiff out of a wheelchair have held that the force used was *de minimis*. *Jones v. Arnette*, 1:16-cv-01212-ADA-GSA-PC, 2022 WL 4897195, at *9 (E.D. Cal. Oct. 9, 2018) (unpublished); *Ellis v. Bennett*, No. C 09–00247 SBA (PR), 2011 WL 1303654, at *2 (N.D. Cal. Mar. 31, 2011) (unpublished); *Armstrong v. Pelayo*, No.

1:13–cv–01048–AWI–SKO (PC), 2014 WL 5093150 at *2 (E.D. Cal. Oct. 9, 2014) (unpublished). The District Court cited to these cases for the proposition that "gratuitous use of force against a restrained pretrial detainee could violate the Fourteenth Amendment's Due Process Clause." App. Vol. 1 at 110. This overgeneralization defines the right too broadly. *See Kisela v. Hughes,* 138 S. Ct. 1148, 1153 (2018). As above, the need for specificity is vital in excessive force cases to fairly put the officer on notice that his actions are unconstitutional. The facts and motives surrounding the Complaint and these two (2) cases differ so significantly as to make them similar only when comparing both cases at a "high level of generality." *Estate of B.I.C,* 761 F.3d at 1106 (quoting. *Plumhoff,* 134 S. Ct. at 2023).

"It does not suffice for a court simply to state that an officer may not use unreasonable and excessive force, deny qualified immunity, and then remit the case for a trial on the question of reasonableness." *Kisela*, 138 S. Ct. at 1153. The District Court did just that; none of the cases cited by Knighten or the District Court remotely relate to the facts at hand *See Pauly v. White*, 874 F.3d 1197, 1223 (10th Cir. 2017) (district court's general statement "that the reasonableness inquiry includes an evaluation of an officer's actions leading up to the use of force" was not sufficient to show clearly established law.).

There is no existing precedent cited by either Knighten or the District Court which addresses, let alone puts beyond debate, a deputy's constitutional obligation

concerning the use of force when pushing an inmate on a wheelchair. There is no precedential case finding comparable force, in comparable circumstances to be objectively unreasonable. A reasonable officer "is not required to foresee judicial decisions that do not yet exist in instances where the requirements of the" Fourteenth Amendment "are far from obvious." *See Kisela*, 138 S. Ct. at 1154.

The facts alleged do not state a run-of-the-mill excessive force claim and presents a unique set of facts. "This alone should have been an important indication to the [District Court] that [Ramsey's] conduct did not violate a "clearly established" right. *See White,* 137 S. Ct. at 552. Therefore, it cannot be said that a reasonable officer in Ramsey's shoes would have known that attempting to remove Knighten from his wheelchair would violate the Fourteenth Amendment.

Indeed, the Tenth Circuit granted qualified immunity to actors who have employed similar or objectively higher degrees of force. *See Rowell v. Bd. of Cnty. Commissioners of Muskogee Cnty., Okla.*, 978 F.3d at 1168 (dismissing an excessive force claim where officers "applied forward pressure," and decedent "hit his dead" and died); *Cortez v. McCauley*, 478 F.3d 1108, 1128 (10th Cir. 2007) (granting qualified immunity to officer who "grabbed" plaintiff and pulled him from his house, and ignored his claims that the handcuffs were too tight); *Routt,* 764 F. App'x at 767 (granting qualified immunity to detention officer who "slung" an inmate into his cell causing injury); *Thompson v. Hamilton*, 127 F.3d 1109, *1 (10th Cir. 1997)

(unpublished) (affirmed dismissal finding that "grabb[ing the plaintiff's] arm, twist[ing] it and chok[ing] him in the process of removing him from his cell" did not establish a constitutional violation.);

Ramsey's alleged use of excessive force was not clearly established in the circumstances of this case. Therefore, qualified immunity applies and the Complaint must be dismissed in its entirety.

CONCLUSION

As Ramsey is entitled to qualified immunity, the part of the District Court's order denying his motion to dismiss must be reversed. The case should be remanded with instructions to dismiss the Complaint.

Respectfully submitted,

s/Leana Glenn
Michael Shouse OBA No. 33610
Leana Glenn OBA No. 34962
Tulsa County District Attorney's Office
218 W. 6th St., 9th Fl.
Tulsa, OK 74119
Telephone: 918-596-4890
mshouse@tulsacounty.org
Lglenn@tulsacounty.org

CERTIFICATE OF COMPLIANCE WITH RULE 32

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 8,154 words; additionally, this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman typeface.

ECF CERTIFICATION

I hereby certify that with respect to this Response Brief:

(1) all required privacy redactions have been made per 10th Cir. R. 25.5;

(2) if required to file additional hard copies, the ECF submission is an exact copy of those documents;

(3) the digital submissions have been scanned for viruses with the most recent version of a commercial virus scanning program, Carbon Black Defense, and according to the program are free of viruses.

s/ Leana Glenn
Leana Glenn
Assistant District Attorney
Tulsa County District Attorney's Office

CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2022, a true and correct electronic copy of this document was served via the CM/ECF system on counsel of record.

s/ Leana Glenn
Michael Shouse, OBA No. 33610
Leana Glenn, OBA No. 34962
Tulsa County District Attorney's Office
218 W. 6th St., 9th Fl.
Tulsa, OK 74119
Telephone: 918-596-4890
Mshouse@tulsacounty.org
Lglenn@tulsacounty.org

ATTORNEY FOR DEFENDANT/APPELLANT

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

DeWAYNE HERNDON KNIGHTEN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 21-CV-0186-CVE-JFJ**
	)	
TULSA COUNTY SHERIFF'S OFFICE, AARON RAMSEY, Deputy, Tulsa County Sheriff's Office, TURN KEY HEALTH SERVICES PROVIDER, BILLIE BYRD, Sergeant, Tulsa County Sheriff's Office,	)	
	)	
Defendants.	)	

OPINION AND ORDER

This civil rights action is before the Court on the motion to dismiss (Dkt. # 24) filed by defendants Deputy Aaron Ramsey, Sergeant Billie Byrd, and the Tulsa County Sheriff's Office (collectively, "defendants").[1] Citing Federal Rule of Civil Procedure 12(b)(6), defendants move to dismiss the civil rights complaint (Dkt. # 1) filed by plaintiff DeWayne Herndon Knighten, for failure to state any claims on which relief may be granted. Defendants contend that the allegations in the complaint, even accepted as true, fail to state any plausible claims against them under 42 U.S.C. § 1983, and, in the alternative, that if Knighten states any plausible claims against Ramsey or Byrd, both are entitled to qualified immunity. Defendants further contend that the Tulsa County

---

[1] A fourth defendant, Turn Key Health Services Provider ("Turn Key") has not been served. Dkt. # 12. Regardless, when, as here, a court authorizes a plaintiff to proceed in forma pauperis, the court "shall dismiss the case at any time if the court determines that . . .the action . . . fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii). Applying this screening provision, the Court will therefore consider whether the complaint states any plausible claims against Turn Key.

Sheriff's Office ("TCSO") is not a proper defendant in a § 1983 action and must be dismissed from this action. Having considered the complaint, the motion to dismiss, Knighten's response in opposition to the motion to dismiss (Dkt. ## 27, 28), and defendants' reply brief (Dkt. # 35), the Court grants in part and denies in part, defendants' motion to dismiss the complaint.

I. Plaintiff's allegations and claims

Knighten, who appears pro se and in forma pauperis, is currently incarcerated at the Jim E. Hamilton Correctional Center, in Hogden, Oklahoma. Dkt. # 36. But he brings this action based on events that allegedly occurred while he was detained at the David L. Moss Criminal Justice Center (the "jail"), in Tulsa, Oklahoma. Dkt # 1, at 2-8. The following facts are drawn from Knighten's complaint.

Knighten was arrested and booked into the jail on January 19, 2020. Dkt. # 1, at 4-5. Sometime before his arrest, Knighten was involved in an accident and he suffered fractures in both ankles. Id. at 4. The arresting officer told deputies at the jail about Knighten's ankle injuries. Id. The arresting officer asked to take Knighten to a hospital, but "Turn Key Medical Services staff" denied the officer's request. Id. Medical staff "claim[ed]" that Knighten "was faking [his] injuries, then refused to allow [him] the use of a wheelchair, despite the clear physical swelling and bruising of [his] legs, ankles, and feet." Id.

On February 7, 2020, Deputy Aaron Ramsey was assigned to transport Knighten to a hospital. Dkt. # 1, at 4-5. As Ramsey was pushing Knighten's wheelchair to Ramsey's car, before they left for the hospital, the two men began arguing because Ramsey thought Knighten was faking his injuries. Id. at 5. Ramsey "tried to force [Knighten] to walk on [his] broken bones by dumping [him] out of [his] wheelchair in the parking garage" at the jail. Id. Knighten refused to walk to the

car "on [his] broken ankles while black-boxed and handcuffed with no leg support." Dkt. # 1, at 4. When Ramsey "dumped" Knighten out of his wheelchair, it caused "more damage" and "more pain" to Knighten's fractured ankles. Id.

At the hospital, Knighten received "an x-ray, full body cat-scan, and MRI." Dkt. # 1, at 5. The results of these tests showed "more agitation to a crush injury." Id. When Knighten returned to the jail after his hospital visit, he was housed in the jail's medical unit until his "body healed enough to be placed in general population." Id. The doctors at the hospital recommended "light physical therapy in the future," but Turn Key denied Knighten physical therapy "because it was deemed 'non-life threatening.'" Id.

Between October 29, 2020, and December 14, 2020, Knighten filed several grievances through the jail's electronic kiosk terminal. Dkt. # 1, at 7. Knighten's grievances complained of the "assault" committed by Ramsey and the "lack of medical treatment [he] should have received," as well as "improper staff conduct," "criminal activity by staff," and the "unjust denial of priveledges [sic]." Id. at 6-7. Sergeant Billie Byrd "minimally answered" Knighten's grievances. Id. at 7. In response to one grievance, Byrd told Knighten that "Ramsey was punished, and [Knighten] just wasn't notified." Id. at 8. Byrd ignored Knighten's request to file criminal charges against Ramsey. Id. at 7-8. In addition, there was no investigation by the TCSO's Internal Affairs Division or other law enforcement officials. Dkt. # 1, at 7. According to Knighten, the TCSO's "[s]taff [did] not attempt[] to do anything or answer [his] grievances" even though they "openly admitted to the assault and lack of medical treatment." Id. Knighten also was "denied the name of the medical personnel who received [him] in booking," when he contacted the head nurse, Mrs. Hadden. Id. at 7-8. The "Tulsa County Sheriff's Internal Affairs refuse[d] to answer all [of Knighten's] inquiries,"

and his "pleas for help from [the] Oklahoma State Bureau of Investigations ha[ve] been ignored." Dkt. # 1, at 7.

Based on these facts, Knighten claims that (1) Deputy Ramsey was assigned to transport Knighten to the hospital and caused him further injuries by assaulting him; (2) Turn Key "refused Knighten medical treatment" for his ankle injuries when he was booked into the jail; (3) Sergeant Byrd "failed to adequately investigate [Knighten's] grievance for medical attention and assault" and "refus[ed] to notify" the TCSO's Internal Affairs Division about Ramsey's assault; and (4) the TCSO "refus[ed] to launch a criminal investigation" regarding the assault. Dkt. # 1, at 4.[2]

As relief for these alleged violations of his civil rights, Knighten seeks punitive damages of $250,000 from Ramsey and $200,000 from Turn Key, and compensatory damages of $200,000 for pain, suffering, and mental anguish. Dkt. # 1, at 5.

II. Dismissal standard

Defendants move to dismiss the complaint under FED. R. CIV. P. 12(b)(6). Dkt. # 24. In reviewing a Rule 12(b)(6) motion to dismiss, a court must accept as true all the well-pleaded factual allegations of the complaint and determine whether the complaint contains "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 570

---

[2] Knighten separately alleges he was deprived of his rights (1) to adequate access to health care; (2) to be free from retaliation by detention staff; (3) to be free from physical abuse; (4) to be free from mental abuse; (5) to seek a criminal investigation against detention staff misconduct; (6) to seek criminal charges against detention staff misconduct; and (7) to be safe and secure from misconduct by detention staff. Dkt. # 1, at 3. Several of these alleged deprivations appear to be included within Knighten's more specific claims against the named defendants. Other alleged deprivations are not supported by any factual allegations. Consequently, the Court finds it reasonable to read the complaint as asserting four claims against the named defendants.

(2007). The complaint should be dismissed "when the allegations in a complaint, however true, could not raise a claim of entitlement to relief." Bell Atl. Corp., 550 U.S. at 558.

Additionally, when a plaintiff appears pro se, a court must liberally construe the complaint. Kay v. Bemis, 500 F.3d 1214, 1218 (10th Cir. 2007). This "means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so." Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991). Nonetheless, even a pro se plaintiff bears "the burden of alleging sufficient facts on which a recognized legal claim could be based." Id. And in affording a plaintiff's complaint a liberal construction, a court "will not supply additional factual allegations to round out a plaintiff's complaint or construct a legal theory on a plaintiff's behalf." Whitney v. New Mexico, 113 F.3d 1170, 1173-74 (10th Cir. 1997).

These same standards apply when a court considers whether a complaint should be dismissed under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim on which relief may be granted. Kay, 500 F.3d at 1217-18.

III. Discussion

To survive a motion to dismiss for failure to state a § 1983 claim, a plaintiff must plausibly allege: "(1) a violation of rights protected by the United States Constitution or created by federal statute or regulation, (2) proximately caused (3) by the conduct of a 'person' (4) who acted under color of any statute, ordinance, regulation, custom[,] or usage, of any State or Territory or the District of Columbia." Summum v. City of Ogden, 297 F.3d 995, 1000 (10th Cir. 2002) (alteration in original) (citation omitted); see also Schaffer v. Salt Lake City Corp., 814 F.3d 1151, 1155 (10th Cir. 2016) (describing a § 1983 claim as consisting of two elements: the "(1) deprivation of a federally protected right by (2) an actor acting under color of state law.").

Liberally construing the complaint, the Court finds it reasonable to read the complaint as asserting four possible § 1983 claims: (1) a Fourteenth Amendment excessive-force claim against Deputy Ramsey based on the alleged assault; (2) a Fourteenth Amendment due-process claim against Sergeant Byrd regarding her alleged mishandling of his grievances; (3) a Fourteenth Amendment due-process claim against the TCSO regarding its alleged refusal to pursue a criminal investigation against Ramsey; and (4) an Eighth Amendment deliberate-indifference claim against Turn Key based on its alleged refusal to provide adequate medical care. However, as discussed next, only one of these claims is plausible.

A. Official-capacity claims against Deputy Ramsey and Sergeant Byrd

As a preliminary matter, Knighten purports to sue Deputy Ramsey and Sergeant Byrd in their individual and official capacities. Dkt. # 1, at 2-3. Defendants contend that the allegations in the complaint fail to state any plausible official-capacity claims against Ramsey or Byrd. See Dkt. # 24, at 11-12. The Court agrees. "[A] suit against a state official in his or her official capacity is not a suit against the official, but rather is a suit against the official's office.'" Brown v. Montoya, 662 F.3d 1152, 1163 n.8 (10th Cir. 2011) (quoting Will v. Mich. Dep't of State Police, 491 U.S. 58, 71 (1989)). In contrast, "[i]ndividual capacity 'suits seek to impose personal liability upon a government official for actions [the official] takes under color of state law.'" Id. (quoting Kentucky v. Graham, 473 U.S. 159, 165 (1985)). Knighten's allegations are most reasonably read as demonstrating his intent to sue Ramsey and Byrd in their individual capacities for their "official acts,"—i.e., for acts they took under color of state law—but not in their official capacities. See Melo v. Hafer, 912 F.2d 628, 636 (3d Cir. 1990) ("It does not follow that every time a public official acts under color of state law, the suit must of necessity be one against the official in his or her official

capacity.") When a plaintiff brings an official-capacity suit against county officials, the plaintiff is effectively suing the county. Porro v. Barnes, 624 F.3d 1322, 1328 (10th Cir. 2010). And, to establish liability against a county in a § 1983 action, a plaintiff must show either "[1] that the unconstitutional actions of an employee were representative of an official policy or custom of the municipal institution, or [2] were carried out by an official with final policy making authority with respect to the challenged action." Seamons v. Snow, 206 F.3d 1021, 1029 (10th Cir. 2000). But none of Knighten's allegations suggests that the alleges actions of either Ramsey or Byrd were representative of an official Tulsa County policy or custom. Nor does he suggest that either of these defendants acted as Tulsa County officials with final policy making authority.

The Court therefore grants in part defendants' motion to dismiss, and dismisses the complaint as to any official-capacity claims Knighten asserts against Deputy Ramsey and Sergeant Byrd.

B. Excessive-force claim against Deputy Ramsey

Defendants contend the complaint also fails to state a plausible claim against Deputy Ramsey, in his individual capacity, for the use of excessive force. They argue that "[t]he amount of force allegedly used by Deputy Ramsey was *de minimis* and does not offend the Constitution." Dkt. # 24, at 5. Alternatively, they argue that if Ramsey's alleged use of force implicates the Constitution, the use of force was objectively reasonable and thus did not violate the Fourteenth Amendment. Id. at 5-7. Finally, they argue that even if Ramsey's alleged use of force violated the Constitution, he is entitled to qualified immunity because he did not violate a clearly established right. Dkt. # 24, at 10-11.

1. Knighten states a plausible excessive-force claim.

As defendants acknowledge, a pretrial detainee can state a plausible Fourteenth Amendment excessive-force claim by alleging that "the force purposely or knowingly used against him was objectively unreasonable." Kingsley v. Hendrickson, 576 U.S. 389, 396-97 (2015). In excessive-force cases "objective reasonableness turns on the 'facts and circumstances of each particular case.'" Id. at 397 (quoting Graham v. Connor, 490 U.S. 386, 396 (1989)). Ultimately, several factors "bear on the reasonableness or unreasonableness of the force used," including, but not limited to: "the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff's injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting." Id. The Kingsley Court noted that, under this objective standard, a pretrial detainee need not prove that an officer intended to inflict punishment. Id. at 398. "Rather, . . . a pretrial detainee can prevail by providing only objective evidence that the challenged governmental action is not rationally related to a legitimate governmental objective or that it is excessive in relation to that purpose." Id.

Accepting Knighten's factual allegations as true, as the Court must at this stage of the litigation, the Court finds them sufficient to state a plausible claim that Deputy Ramsey, acting under color of state law, violated Knighten's Fourteenth Amendment right to be free from the use of excessive force. According to Knighten, Ramsey's task was to transport Knighten to the hospital. In performing that task, Ramsey suggested Knighten was faking his ankle injuries and Ramsey "dumped" Knighten out of a wheelchair when Ramsey refused to walk to Ramsey's car. Dkt. # 1, at 4-5. Knighten alleges he was "black-boxed and handcuffed" at the time, in no condition to walk

on his "broken bones," and in no position to defend himself. Dkt. # 1, at 4, 7. And, while Knighten alleges he exchanged words with Ramsey, none of the allegations in the complaint suggests that Knighten posed a security threat, a flight risk, or a personal threat to Ramsey that would have called for the use of any force, much less that called for dumping Knighten from the wheelchair. Further, according to Knighten, Ramsey's actions caused more damage to his fractured ankles and caused him additional pain. Id. at 4. Accepting these facts as true, it is at least plausible that Ramsey's use of force was"not rationally related to a legitimate governmental objective or [was] excessive in relation to that purpose." Kingsley, 576 U.S. at 398.

Moreover, the *de minimis* principle defendants rely on to argue that this claim is not plausible does not carry the weight defendants place upon it. Dkt. # 24, at 5-7. The extent of any resulting injury from the use of allegedly excessive force is only one factor in the Kingsley analysis. 576 U.S. at 397. As just discussed, Knighten alleges that Ramsey had no objectively reasonable basis to use any force against him in response to his refusal to walk on his broken ankles and that Ramsey's conduct caused more damage to his preexisting injuries. As this case proceeds, additional facts may come to light that support defendants' position that Ramsey's alleged use of force was objectively reasonable under the circumstances and that any resulting injuries were insignificant. But in determining whether a plaintiff can withstand a motion to dismiss for failure to state a claim, a court must "assum[e] that all the allegations in the complaint are true (even if doubtful in fact)," Bell Atl. Corp, 550 U.S. at 555, and allow the complaint to proceed "even if it appears 'that recovery is very remote and unlikely'," id. (quoting Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)). Because the complaint contains enough facts to state a plausible Fourteenth Amendment excessive-force claim against Deputy Ramsey, the Court also must consider Ramsey's assertion of qualified immunity.

2. Ramsey's assertion of qualified immunity does not support dismissal.

"Qualified immunity protects government officials from suit for civil damages if their conduct does not violate clearly established statutory or constitutional rights." Mayfield v. Bethards, 826 F.3d 1252, 1255 (10th Cir. 2016). When a defendant asserts the defense of qualified immunity at the motion-to-dismiss stage, the defendant faces "a more challenging standard of review than would apply on summary judgment." Peterson v. Jensen, 371 F.3d 1199, 1201 (10th Cir. 2004). "[A]t the motion to dismiss stage, [a court's] review is limited to the sufficiency of the allegations in the [c]omplaint." Mayfield, 826 F.3d at 1258. Thus, a plaintiff must plausibly allege (1) that the defendant violated the plaintiff's constitutional right and (2) that the right was clearly established at the time of the alleged conduct. Id. at 1255.

As just discussed, Knighten plausibly alleges a constitutional violation. Defendants argue, however, that at the time of the alleged violation the law was clearly established "that actions like those allegedly taken by Deputy Ramsey are *de minimis* applications of force which do not implicate constitutional concerns." Dkt. # 24, at 5-7, 10. The Court disagrees. "[A] right is clearly established if 'it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.'" Mayfield, 826 F.3d at 1258 (citation omitted); accord District of Columbia v. Wesby, 138 S. Ct. 577, 590 (2018). But a "plaintiff need not show the very act in question previously was held unlawful" to defeat an assertion of qualified immunity. Gutierrez v. Cobos, 841 F.3d 895, 900 (10th Cir. 2016). Rather, it suffices to show that existing law is "clear enough that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply." Wesby, 138 S. Ct. at 590. The right at issue here is Knighten's right, as a pretrial detainee, to be free from the use of force that is objectively unreasonable under all relevant circumstances. In February 2020, it

would have been "clear enough" to a reasonable detention officer that it could be unlawful to use force against a pretrial detainee in a wheelchair who was "black-boxed and handcuffed" when the detainee posed no security threat or flight risk and there exists no apparent, much less legitimate, purpose for the use of force. See e.g., Miller v. Glanz, 948 F.2d 1562, 1564, 1567 (10th Cir. 1991) (finding a plaintiff's allegations sufficient to state an Eighth Amendment claim where officers kicked, beat, and choked the plaintiff while the plaintiff was handcuffed behind his back and his ankles were also restrained); Thompson v. Commonwealth of Virginia, 878 F.3d 89, 102-05 (4th Cir. 2017) (discussing cases decided before April 8, 2010, and concluding: "As is apparent from the case law of eleven federal courts of appeals, the Eighth Amendment protection against the malicious and sadistic infliction of pain and suffering applies in a diverse range of factual scenarios. That unifying thread provides fair notice to prison officials that they cannot, no matter their creativity, maliciously harm a prisoner on a whim or for reasons unrelated to the government's interest in maintaining order. That principle applies with particular clarity to cases such as this one, where the victim is restrained, compliant, and incapable of resisting or protecting himself, and otherwise presents no physical threat in any way."). While Miller and Thompson both involved claims asserted by convicted prisoners under the Eight Amendment's Cruel and Unusual Punishment Clause, this clearly established law would make it even more apparent to a reasonable detention officer that the gratuitous use of force against a restrained pretrial detainee could violate the Fourteenth Amendment's Due Process Clause. See Kingsley, 576 U.S. at 400 (noting that "[t]he language of the two Clauses differs, and the nature of the claims often differs. And, most importantly, pretrial detainees (unlike convicted prisoners) cannot be punished at all, much less 'maliciously and sadistically'"). The Court thus finds that

Ramsey is not entitled to dismissal of the Fourteenth Amendment excessive-force claim on the basis of qualified immunity.

3. Knighten may proceed on his claim against Deputy Ramsey.

Because Knighten states a plausible Fourteenth Amendment excessive-force claim and Deputy Ramsey's assertion of qualified immunity does not support dismissal at this stage of the litigation, the Court denies in part defendants' motion to dismiss the Fourteenth Amendment excessive-force claim asserted against Ramsey, in his individual capacity. Within 14 days of the entry of this opinion and order, Ramsey shall file an answer to the complaint as to that claim. Fed. R. Civ. P. 12(a)(4)(A).

C. Due-process claim against Sergeant Byrd

Next, defendants contend that the complaint fails to state a plausible claim against Sergeant Byrd, in her individual capacity, because there is no constitutional right to have grievances investigated. Dkt. # 24, at 8-9. The Court agrees. Liberally construed, Knighten's allegations as to Sergeant Byrd focus on (1) her alleged failure to respond, or failure to adequately respond, to grievances he filed about Deputy Ramsey's alleged assault and the alleged lack of medical care he received and (2) her alleged refusal to notify the TCSO's Internal Affairs Division of the alleged assault. Dkt. # 1, at 4, 7-8. But a plaintiff's claim that a prison official "mishandled his prison grievance does not implicate any due-process rights." Johnson v. Richins, 438 F. App'x 647, 649 (10th Cir. 2011) (unpublished);[3] see also Todd v. Bigelow, 497 F. App'x 839, 842 (10th Cir. 2012) (unpublished) (rejecting a plaintiff's "claim that he was deprived of his Due Process rights because

---

[3] The Court cites each unpublished decision in this opinion and order for its persuasive value. FED. R. APP. P. 32.1(a); 10th Cir. R. 32.1(A).

his numerous administrative grievances did not spur the re-authorization of his Neurontin prescription" because "prisoners have no liberty interest in prison grievance procedures"); Boyd v. Werholtz, 443 F. App'x 331, 332 (10th Cir. 2011) (unpublished) (noting that "there is no independent constitutional right to state administrative grievance procedures"). Even accepting as true that Byrd mishandled his grievances, Knighten fails to state a plausible Fourteenth Amendment due-process claim against Byrd, in her individual capacity. As a result, the Court finds it unnecessary to consider Byrd's assertion of qualified immunity.

The Court therefore grants in part defendants' motion to dismiss, and dismisses the complaint as to the Fourteenth Amendment due-process claim asserted against Sergeant Byrd, in her individual capacity.

D. Due-process claim against the TCSO

Defendants construe Knighten's complaint as alleging that the TCSO "is responsible for Internal Affairs' failure to conduct a criminal investigation into [Knighten's] claims against Deputy Ramsey and for not filing charges against him." Dkt. # 24, at 11. The Court finds that this is a fair reading of the complaint. See Dkt. # 1, at 4 ("The [TCSO] refuses to launch a criminal investigation for criminal misconduct by a deputy assigned to Tulsa County Jail to transport me to a outside medical provider.") Defendants contend that the TCSO should be dismissed from this action because the TSCO cannot be sued under § 1983. Dkt. # 24, at 12-13. Alternatively, defendants argue that Knighten fails to state a plausible claim because individuals have no constitutional right to have another individual criminally investigated. Id. at 13. The Court agrees with both points.

First, the law of the state in which the district court is located determines a noncorporate entity's capacity to be sued. FED. R. CIV. P. 17(b)(3). Under Oklahoma law, a county sheriff's office

is not subject to suit under § 1983 because it has no legal identity of its own. See Reid v. Hamby, No. 95-7142, 124 F.3d 217 (Table), 1997 WL 537909, at *6 (10th Cir. Sept. 2, 1997) (unpublished) (holding that "an Oklahoma 'sheriff's department' is not a proper entity for purposes of a § 1983 suit"); Hollis v. Creek Cty. Sheriff's Off., No. 13-CV-0590-CVE-FHM, 2013 WL 6074165, at *2 (N.D. Okla. Nov. 18, 2013) (unpublished) (collecting cases and stating that the "Sheriff's Office is not a proper defendant").

Second, even assuming Knighten could amend the complaint to sue Tulsa County through a proper defendant, e.g., the Tulsa County Sheriff or the Board of County Commissioners of the County of Tulsa, his allegations do not state a plausible constitutional claim arising from the alleged failure to open a criminal investigation against Deputy Ramsey. As defendants contend, "a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another." Leeke v. Timmerman, 454 U.S. 83, 85-86 (1981) (quoting Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973)); see also Maxey v. Banks, 26 F. App'x 805, 808 (10th Cir. 2001) (unpublished) (holding that an individual "does not have a federal due process right to a police investigation").

For these reasons, the Court grants in part defendants' motion to dismiss, dismisses the TCSO from this action as an improper party, and dismisses the complaint in part as to the Fourteenth Amendment due-process claim arising from the failure to launch a criminal investigation into Ramsey's alleged assault against Knighten.

E. Deliberate-indifference claim against Turn Key

Lastly, the Court considers whether the complaint is sufficient to state a plausible Eighth Amendment deliberate-indifference claim against Turn Key. Knighten alleges that on January 19,

2020, when he was being booked into the jail, a Turn Key employee[4] refused the arresting officer's request to take Knighten to the hospital, claimed that Knighten was faking his injuries, and refused to let him use a wheelchair despite noticeable swelling and bruising on his ankles and feet. Dkt. # 1, at 4. In addition, after Knighten returned from a trip to the hospital on February 7, 2020, he was housed in the medical unit until he healed but Turn Key refused to provide him with "light physical therapy" per the recommendations of doctors at the hospital, "because it was deemed 'non-life threatening." Dkt. # 1, at 5.

For two reasons, the Court finds these allegations, even accepted as true, fail to state any plausible claims for relief against Turn Key. First, when a plaintiff sues a private corporation for an alleged constitutional violation committed by its employees, the corporation is treated like a municipality and "cannot be held liable under § 1983 on a *respondent superior* theory." Dubbs v. Head Start, Inc., 336 F.3d 1194, 1216 (10th Cir. 2003) (quoting Monell v. New York City Dep't of Soc. Servs., 436 U.S. 658, 691 (1978)). Thus, a plaintiff must plausibly allege either "[1] that the unconstitutional actions of an employee were representative of an official policy or custom of the municipal institution, or [2] were carried out by an official with final policy making authority with respect to the challenged action." Seamons, 206 F.3d at 1029; see also Revilla v. Glanz, 8 F. Supp. 3d 1336, 1341 (N.D. Okla. 2014) (explaining that to establish corporate liability based on policy or custom a plaintiff must "allege facts to show the existence of a [corporate] policy or custom by which each plaintiff was denied a constitutional right and that there is a direct causal link between the policy or custom and the injury alleged"). Knighten's allegations refer to actions of unidentified

---

[4] Knighten alleges that the head nurse at the jail, Mrs. Hadden, refuses to provide him the name of the employee who interviewed him during the booking process. Dkt. # 1, at 8.

Turn Key employees, but his allegations do not suggest that these actions were representative of a Turn Key policy or custom, or that any of the unidentified employees acted as policymakers for Turn Key.

Second, even assuming Knighten could amend the complaint to add one or more Turn Key employees as defendants or to include additional factual allegations that might support imposing municipal liability against Turn Key, he would not be able to state a plausible deliberate-indifference claim. Under the Eighth Amendment, jail officials "must provide humane conditions of confinement," i.e., they "must ensure that inmates receive adequate food, clothing, shelter, and medical care and must 'take reasonable measures to guarantee the safety of inmates.'" Farmer v. Brennan, 511 U.S. 825, 832 (1994) (quoting Hudson v. Palmer, 468 U.S. 517, 526-27 (1984)). To state a plausible Eighth Amendment violation based on the failure to provide medical care, a plaintiff must allege facts evidencing "deliberate indifference to [his] serious illness or injury." Estelle v. Gamble, 429 U.S. 97, 104 (1976). Negligence, even negligence rising to the level of medical malpractice, does not violate the Eighth Amendment. See id. at 106-07; see also Callahan v. Poppell, 471 F.3d 1155, 1160 (collecting cases regarding the scope of the Eighth Amendment right to adequate medical care). This means that a plaintiff must allege facts showing "more than ordinary lack of due care for the prisoner's interests or safety." Farmer, 511 U.S. at 827. Rather, to satisfy the deliberate-indifference standard, a plaintiff must plausibly allege (1) a harm that was objectively "sufficiently serious," Callahan, 471 F.3d at 1159, and (2) that the defendant subjectively "kn[e]w of and disregard[ed] an excessive risk to inmate health or safety," Farmer, 511 U.S. at 837. Here, Knighten alleges that Turn Key's medical staff (1) did not honor the arresting officer's purported request to take Knighten directly to the hospital on January 19, 2020, when he was booked into the

jail; and (2) did not follow the doctors' recommendations for "light physical therapy," after he returned from a hospital visit on February 7, 2020. Dkt. # 1, at 4-5. But Knighten's disagreement with decisions Turn Key staff members made in assessing his need for immediate medical care or his need for physical therapy do not support his claim that he was denied constitutionally adequate medical care. See, e.g., Gamble, 429 U.S. at 107 ("A medical decision not to order an X-ray, or like measures, does not represent cruel and unusual punishment."); Mata v. Saiz, 427 F.3d 745, 751 (10th Cir. 2005) (reasoning that "a delay in medical care 'only constitutes an Eighth Amendment violation where the plaintiff can show the delay resulted in substantial harm.'" (quoting Oxendine v. Kaplan, 241 F.3d 1272, 1276 (10th Cir. 2001)); Callahan, 471 F.3d at 1160 (explaining that the Eighth Amendment right to adequate medical treatment does not include a right to a particular course of treatment). Even accepting Knighten's allegations as true, those allegations show only that he was: denied the course of treatment he thought he needed on January 19, 2020, when he was booked into the jail for injuries he sustained at some unspecified time before his arrest that were unrelated to his arrest and for which he did not previously seek treatment; he subsequently received medical care at the jail that differed from the care recommended by doctors who performed x-rays on February 7, 2020; and he was housed in the jail's medical unit until his body healed. Dkt. # 1, at 4-5. At most, these facts show a negligible delay in medical treatment, not deliberate indifference to a serious medical need.

For these reasons, the Court dismisses the complaint in part, under 28 U.S.C. § 1915(e)(2)(B)(ii), as to all claims asserted against Turn Key.

ACCORDINGLY, IT IS HEREBY ORDERED that:

1. defendants' motion to dismiss (Dkt. # 24) is **granted in part and denied in part**;

2. the complaint (Dkt. # 1) is **dismissed** in part as to:

   a. all claims asserted against defendant Billie Byrd,

   b. all claims asserted against defendant the Tulsa County Sheriff's Office,

   c. any official-capacity claims asserted against defendant Aaron Ramsey, and

   d. all claims asserted against defendant Turn Key Health Services Provider;

3. Knighten may proceed only on the Fourteenth Amendment excessive-force claim he asserts against defendant Aaron Ramsey, in his individual capacity; and

4. within 14 days of the entry of this opinion and order, or by **September 1, 2022**, defendant Aaron Ramsey shall file an answer to the complaint as to the Fourteenth Amendment excessive-force claim asserted against him in his individual capacity.

DATED this 18th day of August, 2022.

Claire V Eagan

CLAIRE V. EAGAN
UNITED STATES DISTRICT JUDGE