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

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

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INTRODUCTION

Plaintiff-Appellee ("Knighten") relies upon mischaracterizations of the allegations pled in the Complaint and misunderstandings of the law in his Response Brief. This Reply Brief does not address each issue or argument set forth by Knighten in his Response Brief, but focuses on the relevant legal issues and corrects a number of Knighten's false or misleading arguments and assertions. Appellant, Aaron Ramsey ("Ramsey"), incorporates his Opening Brief as fully set forth herein and does not waive or abandon any proposition of error presented in this appeal. For the reasons set forth in the Opening Brief and herein, this Court should reverse the district court's denial of the portion of the order that denied Ramsey qualified immunity and remand with instruction to dismiss the case in its entirety.

ARGUMENT

I. A DE MINIMIS APPLICATION OF FORCE IS INSUFFICENT TO SUPPORT A CLAIM FOR EXCESSIVE FORCE UNDER ANY CONSITUTIONAL AMENDMENT

Knighten complains that Ramsey tried to have Knighten stand up from his wheelchair in order to further transport him to an off-site medical provider. *See* App. Vol. 1 at 11-12, 50, 93. This action forms the entire basis of Knighten's claim for excessive force against Ramsey. *See id*. Knighten does not provide authority which demonstrates that Ramsey's alleged conduct amounts to anything other than a *de minimis* use of force. Instead, Knighten argues that "Ramsey's use of force was not

de minimis because . . . Ramsey used enough force to dump Mr. Knighten from a wheelchair, cause him pain, and further injure his ankles." Response Brief, at 44-45. Knighten is mistaken. First, the facts that can be reasonably inferred from the record demonstrate that Knighten never separated from his wheelchair during the alleged use of force. *See* Opening Brief, at 4, 7, 13. Second, Ramsey's alleged actions are not capable of forming the basis of a constitutional violation. *See id*. at 13, 16-18.

As provided in Ramsey's opening brief, a *de minimis* quantum of force is not actionable under the Fourteenth Amendment, or any other constitutional amendment. Opening Brief, at 10-12; *see also Jackson v. Buckman*, 756 F.3d 1060, 1067 (8th Cir. 2014) ("a *de minimis* quantum of force is not actionable under the Due Process Clause" of the Fourteenth Amendment); *Chambers v. Pennycook*, 641 F.3d 898, 906 (8th Cir. 2011) ("A *de minimis use of force* is insufficient to support a claim" under the Fourth Amendment.); *Leary v. Livingston Cnty*., 528 F.3d 438, 443 (6th Cir. 2008) ("Under either constitutional guarantee [Eight or Fourteenth Amendments], an excessive-force claimant must show something more than *de minimis* force.").

The Supreme Court's opinion in *Kingsley* did not disturb this fundamental constitutional principle. *See Brown v. Muskegon Cnty. Jail*, No. 1:19-CV-235, 2019 WL 2482359, at *4 (W.D. Mich. June 14, 2019) ("All of the considerations mentioned in *Kingsley* assume that some meaningful level of force was exerted on

the plaintiff.").[1] And rightly so, for without a *de minimis* threshold, every touch on a pretrial detainee by jail staff could give rise to a constitutional claim. Such action would completely assume state tort law and trivialize the Constitution. Thus, the constitutional floor against excessive force must be higher than common law torts. *See* Opening Brief at 11-12, 18; *see also Collins v. City of Harker Heights*, *Tex.*, 503 U.S. 115, 128 (1992) ("Because the Due Process Clause 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, . . we have previously rejected claims that the Due Process Clause should be interpreted to impose federal duties that are analogous to those traditionally imposed by state tort law . . .") (internal quotations and citation omitted).

Knighten ignores the above and erroneously argues that Ramsey "attempts to win qualified immunity by relying on a case that 'concern[ed] excessive force claims brought by convicted prisoners under the Eighth Amendment's Cruel and Unusual Punishment Clause, not claims brought by pretrial detainees under the Fourteenth

[1] Without support, Knighten argues that courts examine the *Kingsley* factors to determine whether the force allegedly used was *de minimis*. Response Brief, at 45. To the contrary, courts only need to examine the *Kingsley* factors **when** the force alleged rises above a *de minimis* level. *See, e.g., Hanson v. Madison Cnty. Det. Ctr.,* 736 F. App'x 521, 530 (6th Cir. 2018); *Jackson v. Stubenvoll*, No. 16-CV-05746, 2022 WL 991950, at *3 (N.D. Ill. Mar. 31, 2022); *Brown*, 2019 WL 2482359, at *4; *Wilson v. Hartman*, No. 21-2308, 2022 WL 1062053, at *1 (C.D. Ill. Apr. 8, 2022); *Waterman v. Tippie*, No. 21-3097-SAC, 2022 WL 293233, at *1 (D. Kan. Feb. 1, 2022); *Parks v. Taylor*, No. CIV-18-968-D, 2020 WL 1271587, at *5 (W.D. Okla. Mar. 17, 2020).

Amendment's Due Process Clause."' Response Brief, at 47 (citing *Kingsley v. Hendrickson,* 576 U.S. 389, 400 (2015)).[2] Knighten's misunderstanding is laid bare when he argued that "cases in which a court finds a level of force not excessive when used against a prisoner may not be relied upon to prove that the same level of force would be acceptable when used against a pretrial detainee." *Id*. at 49.

Knighten correctly states that the Fourteenth and Eighth Amendments have different standards for proving a constitutional violation for excessive force. However, this is of no consequence when the force alleged does not rise to a constitutional level. The *de minimis* principle provides that there is a quantum of force that **never** rises to a constitutional level, regardless of the amendment under which the claim is brought. *See* Opening Brief, at 10-12; *see also Jackson,* 756 F.3d at 1067; *Chambers*, 641 F.3d at 906; *Leary,* 528 F.3d at 443.

As above, the *de minimis* principle provides a constitutional threshold. When a court finds that the force alleged is *de minimis*, the court is not stating that the specific elements by which the force is to be judged under the applicable constitutional amendment have not been satisfied.[3] That particular question must only be answered if a court first finds that the force alleged rises above the *de*

[2] Ramsey also relied on Fourth and Fourteenth Amendment cases. *See* Opening Brief, at 10-18. Knighten provides no argument in opposition to their application.

[3] However, *de minimis* force would certainly fail under any standard. *See* Opening Brief, at 10-12.

minimis threshold. *See supra* n.1; *Jackson*, 756 F.3d at 1067; *Nolin v. Isbell*, 207 F.3d 1253, 1258 (11th Cir. 2000); *See Thomas v. Rogers*, No. 1:19-cv-01612- RM-KMT, 2020 WL 2812724, at *6 (D. Colo. Apr. 27, 2020).

Simply put, if the force is *de minimis,* it is incapable of providing a basis for a constitutional violation. Therefore, cases brought under the Fourth and Eighth Amendments, which find the force alleged to be *de minimis,* are instructive in Fourteenth Amendment claims. *See Crocker v. Beatty*, 995 F.3d 1232, 1251 (11th Cir. 2021), *cert. denied,* 211 L. Ed. 2d 522, 142 S. Ct. 845 (2022) (Fourteenth Amendment *de minimis* force case, which cites to *Graham v. Connor*, 490 U.S. 386, 386 (1989) (Fourth Amendment case); *Jackson*, 756 F.3d at 1068 (Fourteenth Amendment *de minimis* force case, which cites to *Hudson v. McMillian,* 503 U.S. 1 (1992) (Eight Amendment case), and *Chambers,* 641 F.3d at 901 (Fourth Amendment case); *Leary*, 528 F.3d at 443 (Fourteenth Amendment *de minimis* for case, which cites to *Hudson v. McMillian,* 503 U.S. 1, 112 (1992) (Eight Amendment case); *Jackson v. Stubenvoll,* No. 16-CV-05746, 2022 WL 991950, at *3–4 (N.D. Ill. Mar. 31, 2022) (Fourteenth Amendment *de minimis* force case, which cites to Eighth Amendment cases).

Tellingly, Knighten makes no effort to distinguish the relevant facts presented in any *de minimis* case cited by Ramsey in his Opening Brief. Knighten also fails to provide any case with similar facts that would show that the quantum of force

allegedly used by Ramsey rises above a *de minimis* level.[4] Although Knighten cites to *Ali v. Duboise* for support, the portion cited by Knighten is easily distinguishable when examining **all** of the facts alleged. 763 F. App'x 645, 648 (10th Cir. 2019).[5] However, an excessive force allegation that *Ali* made against a different detention staff member is instructive. *Id.* at 649-50.

There, the plaintiff and a fellow inmate were praying in a jail cell together. *Id.* at 647. A detention staff member told the pair they could not pray in the same cell together. *Id.* After the plaintiff asked where the pair could pray, the staff member "pushed [plaintiff's] chest with his left arm, causing [plaintiff's] back to be slammed into the cell wall." *Id*.[6] Accordingly, even though there was no legitimate

[4] Although Knighten alleged he suffered pain and agitation to an already existing injury, *de minimis* force does not rise to a constitutional level just because of an alleged injury. *See Alexandre v. Ortiz*, 789 F. App'x 169, 175 (11th Cir. 2019).

[5] In the portion Knighten cited, the plaintiff alleged that detention staff dragged him handcuffed across the floor of the jail until they made him "stand up and forcefully pushed [his] handcuffed arms that were behind his back, in a way to hyperextend them above his head, while [his] neck was being pushed by" the officers. *Id.* The detention staff then allegedly dragged the plaintiff to the medical unit, where a staff member "deliberately with malicious intent to cause pain and injury[,] pushed [the plaintiff's] left wrist upwards, in order to be crushed by the handcuffs, causing excruciating pain and shock to [the plaintiff] from wrist to left shoulder. *Id.* The staff member then asked the plaintiff, "How you like that[?]. *Id.* Therefore, unlike in *Ali* where the plaintiff alleges a continuous application of **unnecessary** force on a compliant inmate, Knighten alleges that Ramsey used a single application of necessary force on a non-complaint, resistant inmate while furthering a legitimate penological interest. *See* App. Vol. I at 11-12; App. Vol. 2 at 27.

[6] This Court noted "that in attachments to the Complaint, which are dated closer to the events in question than the Complaint, [the plaintiff] twice described [the staff member's]

penological need to use force, this Court held that the quantum of force used by the detention staff member was *de minimis,* and dismissed the excessive force claim against him. *Id.* at 650-51.[7]

In sum, Ramsey allegedly performed an act upon Knighten's wheelchair in an attempt to get him to stand up in order to place him in the transport vehicle. Knighten does not state what Ramsey specifically did during this interaction. As pled, the force alleged can only be described as *de minimis*. There is no case showing that the quantum of force alleged here is capable of violating the Fourteenth Amendment. Indeed, the most analogous cases all find the force alleged to be *de minimis*. *See Ellis v. Bennett*, No. C 09-00247 SBA (PR), 2011 WL 1303654, at *2 (N.D. Cal. Mar. 31, 2011); *See Armstrong v. Pelayo*, No. 1:13-cv-01048-AWI-SKO (PC), 2014 WL 5093150 at *2 (E.D. Cal. Oct. 9, 2014); *Jones v. Arnette*, 1:16-cv-0 1212-ADA-GSA-PC, 2018 WL 4897195, at *9 (E.D. Cal. Oct. 9, 2018). As *de minimis* force is

actions as 'causing [him] to back up into the wall,' rather than 'slamming' him into the wall." *Id.* at 647 n.2.

[7] Likewise, other courts have found that even when there is no need to use force, the alleged use of force must still rise above a *de minimis* level for a constitutional violation to occur. *See, e.g., Hanson v. Madison Cnty. Det. Ctr*., 736 F. App'x 521, 530 (6th Cir. 2018); *Alexandre v. Ortiz*, 789 F. App'x 169, 175 (11th Cir. 2019); *Durruthy v. Pastor*, 351 F.3d 1080, 1094 (11th Cir. 2003); *Hutchison v. Smith*, No. 420CV00779LPRJJV, 2022 WL 4089457, at *3 (E.D. Ark. June 16, 2022), *report and recommendation adopted*, No. 4:20-CV-779-LPR, 2022 WL 4087644 (E.D. Ark. Sept. 6, 2022); *Wilson v. Hartman,* No. 21-2308, 2022 WL 1062053, at *1 (C.D. Ill. Apr. 8, 2022).

incapable of violating any constitutional provision, Ramsey is entitled to qualified immunity.

II. HAVING AN INMATE STAND IN ORDER TO COMPLETE A LEGITIMATE PENOLOGICAL TASK IS NOT PUNITIVE

"An official's use of force does not amount to punishment in the constitutional sense if it is 'but an incident of some other legitimate governmental purpose.'" *Jackson v. Buckman*, 756 F.3d 1060, 1067 (8th Cir. 2014) (quoting *Bell v. Wolfish,* 441 U.S. at 535, 538 (1979)). As above, Knighten complains that during his transportation to an offsite hospital, Ramsey used excessive force when he attempted to remove Knighten from a wheelchair following Knighten's refusal to follow Ramsey's legitimate requests to stand up. App. Vol. 1 at 12, 93. Knighten claims that no penological purpose was being served at the time the force was used, or in the alternative, that the force used by Ramsey was excessive in relation to that purpose. Both of Knighten's arguments are without merit.

A. TRANSPORTING AN INMATE TO A MEDICAL PROVIDER SERVES A LEGITIMATE PENOLOGICAL INTEREST

Knighten argues that Ramsey's alleged attempt to have Knighten stand in order to get him into the transport vehicle was both explicitly and implicitly punitive. Response Brief, at 20. Not so. First, Knighten does not allege that Ramsey used force to expressly punish him. *See* App. Vol. I at 11-12. Indeed, the Complaint fails to state that Ramsey "expressed" anything. *Id*.; *see Bloom v. Toliver*, 133 F. Supp. 3d

1314, 1332 (N.D. Okla. 2015), *aff'd sub nom*. *Bloom v. Pompa*, 654 F. App'x 930 (10th Cir. 2016).[8] Second, Ramsey's alleged use of force is incapable of providing an inference of punitive intent.[9]

Running a jail is "an inordinately difficult undertaking." *Turner v. Safley*, 482 U.S. 78, 84–85 (1987). "Safety and order at these institutions requires the expertise of correctional officials, who must have substantial discretion to devise reasonable solutions to the problems they face." *Kingsley v. Hendrickson*, 576 U.S. 389, 399 (2015) (internal quotation marks omitted) (quoting *Florence v. Bd. of Chosen Freeholders*, 566 U.S. 318, 326 (2012)). Indeed, "[t]he 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." *Routt v. Howard*, 764 F. App'x 762, 769 (10th Cir. 2019).

[8] Contrary to Knighten's assertion, an expressed intent to punish alone cannot provide the basis for an excessive force clam under the Fourteenth Amendment. *Crocker v. Beatty*, 995 F.3d 1232, 1249 (11th Cir. 2021), *cert. denied*, 211 L. Ed. 2d 522, 142 S. Ct. 845 (2022) ("We don't think, then, that an express intent to punish alone, coupled with an objectively reasonable use of force, can sustain an excessive-force claim. . . . [I]t would be passing strange if, as the dissent seems to suggest, the excessiveness of an officer's use of force ultimately had nothing to do with the excessiveness of that force but, instead, hinged entirely on proof of an 'express intent to punish.'").

[9] It appears Knighten believes that force found to be nonpunitive can still violate the Fourteenth Amendment. Response Brief, at 27. However, the Due Process Clause only "protects a pretrial detainee from the use of excessive force that amounts to punishment." *Kingsley*, 576 U.S. at 397.

Here, Knighten needed to exit his wheelchair in order to get into the transport vehicle. Opening Brief, at 3-4, 20-22. He refused to stand after Ramsey requested that he do so. *Id.* at 3. Force would therefore necessarily be needed to remove Knighten from the wheelchair or get him closer to the transport vehicle. Thereafter, Ramsey allegedly performed an unspecified act upon the wheelchair, which did not cause Knighten to be removed from the wheelchair. App. Vol. I at 11-12, 50, 93. Ramsey and another deputy then used necessary force to place Knighten into the transport vehicle (of which Knighten does not complain). *Id*. at 52-54, 96; App. Vol II at 26-27. Once the need to use force ceased, no further force was employed. *See Johnson v. Conway*, 688 F. App'x 700, 708 (11th Cir. 2017). Accordingly, Ramsey's alleged use of force advanced a legitimate government interest: transporting Knighten efficiently and effectively to the offsite medical facility.

Knighten cites to *Blackmon v. Sutton*, 734 F.3d 1237 (10th Cir. 2013), in support of his argument. Response Brief, at 23-24. However, *Blackmon* actually supports dismissal of Knighten's claim. In *Blackmon*, this Court stated that pretrial detainees can prove "unconstitutional punishment by showing that the restriction in question bears no reasonable relationship to any legitimate governmental objective." 734 F.3d at 1241. "[T]he government may have a legitimate interest in ensuring the safety and order of the facilities where it houses pretrial detainees. Restraints bearing

a reasonable relationship to interests like these do not constitute punishment 'even if they are discomforting.'" *Id.* (quoting *Bell v. Wolfish,* 441 U.S. 520, 540 (1979)).

However, there are certain restraints that are not reasonably related to carrying out any purpose except punishment. *Id.* If a use of force is employed "without any penological purpose," the force can be implicitly punitive. *Id.* at 1243. In *Blackmon*, a detention staff member sat on a child's chest because he refused to answer an "idle question unrelated to the administration of the detention facility." *Id.* at 1243-44. This Court stated, that although detention facilities have a legitimate penological interest in having inmates do what they are told, the Court "found no evidence suggesting what the inmate failed to do, no evidence suggesting what legitimate penological purpose was in play in forcing him to respond, no evidence suggesting why officials thought it reasonable to effect that purpose by having a grown man sit on a 96–pound boy." *Id.* at 1244. Accordingly, the Court was "unable to exclude the possibility that a defendant used force against [the inmate] as punishment," and denied the officer qualified immunity. *Id.*

Here, the record stands in stark contrast. Knighten's refusal to comply with Ramsey's request to stand was not an "idle question" but one related to a legitimate government interest: transporting Knighten effectively and efficiently to the hospital. Furthermore, as above, having detainees comply with commands and not hinder jail staff serves a legitimate purpose. For if the inmates could refuse to comply

with lawful requests, the jail could not function. Additionally, Knighten's noncompliance and resistance caused a major disturbance in the jail's sally-port, which hindered Ramsey in completing his legitimate task. Opening Brief, at 3, 4.

Further dissimilar to *Blackmon*, there is a clear and reasonable relationship between the force allegedly used by Ramsey and the governmental objective.[10] Knighten's assertion that Ramsey's attempt to remove him from the wheelchair was solely for punitive purposes defies reason and common sense, as the only way the task could have been completed is for Knighten to be separated from the wheelchair. Although Knighten objects to this, actions "bearing a reasonable relationship to interests like these do not constitute punishment 'even if they are discomforting.'" *See Blackmon*, 734 F.3d at 1241 (quoting *Bell,* 441 U.S. at 540).

Accordingly, Knighten failed to show that there was no reasonable relationship between the force alleged and "any" legitimate governmental objective. The complained of actions were related to the administration of the detention facility and performed to facilitate the transportation of Knighten to the hospital.

B. RAMSEY'S ACTIONS WERE NOT EXAGGERATED IN LIGHT OF THE CIRCUMSTANCES

[10] Although the forced used here furthered a legitimate government interest, contrary to Knighten's assertion, unnecessary force or force used on a non-resisting inmate is not always punitive or violative of the Constitution. *See Ali,* 763 F. App'x at 650; *Johnson v. Conway*, 688 F. App'x 700; *Parks v. Taylor*, No. CIV-18-968-D, 2020 WL 1271587, at *5 (W.D. Okla. Mar. 17, 2020).

Likewise, there are no allegations within the Complaint that show Ramsey's actions were excessive in relation to his legitimate objective. Knighten argues that "[w]hen an individual is restrained, not resisting, and otherwise immobile, any amount of force is unnecessary." Response Brief, at 29. Even if that were true, it has no application here. Initially, force must be used to transport an inmate in a wheelchair. *See Johnson v. Conway*, 688 F. App'x 700, 708 (11th Cir. 2017) ("To effectuate that transfer, the detention officers, as he admits, were permitted to use some degree of force or coercive measures.").[11] Due to Knighten's noncompliance and resistance, additional force was authorized in this case. *See Nosewicz v. Janosko*, 754 F. App'x 725, 734 (10th Cir. 2018); *Mitchell v. Richter*, No. 15-CV-1520-JPS, 2017 WL 752162, at *9 (E.D. Wis. Feb. 27, 2017) (citing *Guitron v. Paul*, 675 F.3d 1044, 1046 (7th Cir. 2012)). As above, all that is alleged here is that Ramsey attempted to remove Knighten from the wheelchair, which had to occur to transport Knighten to the outside medical provider.

[11] If the force implicit in pushing a wheelchair is sufficient to state an excessive force claim, it would lead to absurd results.

Additionally, there is no allegation that Knighten was "immobile."[12] Indeed, Knighten admits that his alleged injury did not prevent him from walking.[13] *See* App. Vol. 1 at 90, 93. Although Knighten alleges that his hands were restrained, there were no restraints on his legs. App. Vol. 1 at 11. Therefore, he was not restrained in a way where he could not protect himself from any foreseeable harm related to being removed from his wheelchair. Finally, although the force used here was reasonable, even unnecessary force must rise above a *de minimis* level to violation the Fourteenth Amendment. *Supra* n.7.

The above facts are wholly insufficient for a reviewing court to determine that Ramsey's actions were objectively unreasonable. *Blackmon*, 734 F.3d at 1243 ("the burden is on plaintiff to explain in the first instance why force was unjustified") (citing *Gee v. Pacheco,* 627 F.3d 1178, 1185 (10th Cir.2010)). Therefore, Ramsey is entitled to qualified immunity.

[12] Although, there is no allegation that Knighten couldn't walk or stand at the time of the incident at issue, even if there were, it is of no consequence because Ramsey did not know Knighten was allegedly injured. Objective reasonableness must be viewed through what the officer knew at the time. *See Kingsley v. Hendrickson,* 576 U.S. 389, 397, 399 (2015).

[13] As above, even though Knighten alleges that he suffered pain an agitation to a preexisting condition, this does turn otherwise reasonable force into excessive force. *See* Opening Brief, at 24; *Rowell v. Bd. of Cnty. Commissioners of Muskogee Cnty., Oklahoma,* 978 F.3d 1165, 1174 (10th Cir. 2020).

C. SWEEPING STATEMENTS OF LAW ARE GENERALLY INCAPABLE OF SATISFYING THE CLEARLY-ESTABLISHED PRONG IN EXCESSIVE FORCE CASES

Although, "general statements of the law are not inherently incapable of giving fair and clear warning to officers[,]"[14] outside of an "**extreme situation**" or "**particularly egregious conduct**," they are insufficient to establish a right with enough clarity to deny an officer qualified immunity. *Frasier v. Evans*, 992 F.3d 1003, 1021 (10th Cir. 2021), *cert. denied*, 211 L. Ed. 2d 251, 142 S. Ct. 427 (2021) (quoting *Taylor v. Riojas*, 208 L. Ed. 2d 164, 141 S. Ct. 52, 53–54 (2020)) (emphasis added). "Otherwise, [p]laintiffs would be able to convert the rule of qualified immunity . . . into a rule of virtually unqualified liability simply by alleging violation of extremely abstract rights." *White v. Pauly*, 580 U.S. 73, 137 S. Ct. 548, 552, 196 L. Ed. 2d 463 (2017) (internal quotations omitted).

The degree of specificity required to properly put an officer on notice that his conduct is capable of violating a constitutional provision is even higher in excessive force cases. *See Arnold v. City of Olathe, Kansas*, 35 F.4th 778, 793 (10th Cir. 2022) ("It is particularly important that a Fourth Amendment right be clearly established in a specific factual scenario because it can be difficult for an officer to determine how the prohibition against excessive force will apply in novel situations.") (citing *City of Tahlequah v. Bond*, —— U.S. ——, 142 S. Ct. 9, 11, 211 L.Ed.2d 170

[14] *Kisela v. Hughes*, 200 L. Ed. 2d 449, 138 S. Ct. 1148, 1153 (2018).

(2021)). "Use of excessive force is an area of the law 'in which the result depends very much on the facts of each case,' and thus police officers **are entitled** to qualified immunity **unless** existing precedent 'squarely governs' the specific facts at issue." *Kisela v. Hughes*, 200 L. Ed. 2d 449, 138 S. Ct. 1148, 1153 (2018) (quoting *Mullenix v. Luna*, 577 U.S. 7, 13, (2015)) (emphasis added); *Johnson v. Conway*, 688 F. App'x 700, 706 (11th Cir. 2017) ("Because excessive-force claims are inherently fact specific, "generally no bright line exists for identifying when force is excessive; we have therefore concluded that unless a controlling and materially similar case declares the official's conduct unconstitutional, a defendant is usually entitled to qualified immunity.") (quoting *Priester v. City of Riviera Beach, Fla.*, 208 F.3d 919, 926 (11th Cir. 2000)).[15]

The Supreme Court routinely reverses lower court decisions in excessive force cases when they define the right too broadly. *See, e.g.*, *Mullenix v. Luna*, 577 U.S. 7 (2015); *White v. Pauly*, 580 U.S. 73 (2017); *Kisela v. Hughes*, 200 L. Ed. 2d 449, 138 S. Ct. 1148, 1153 (2018); *City of Escondido, Cal. v. Emmons*, 202 L. Ed. 2d 455, 139 S. Ct. 500, 503 (2019); *City of Tahlequah, Oklahoma v. Bond*, 211 L.

[15] *Routt v. Howard*, No. 17-CV-0020-JED-JFJ, 2018 WL 2392541, at *7 (N.D. Okla. May 25, 2018), *aff'd*, 764 F. App'x 762 (10th Cir. 2019) ("In light of *Kingsley's* adoption of the objective-reasonableness standard for Fourteenth Amendment excessive-force claims asserted by pretrial detainees . . . *Mullenix's* specificity requirement has equal force in the Fourteenth Amendment excessive-force context.") (internal citation omitted).

Ed. 2d 170, 142 S. Ct. 9, 12 (2021); *but see Taylor v. Riojas*, 208 L. Ed. 2d 164, 141 S. Ct. 52, 53 (2020), for a rare and extreme case where a general statement of law can provide an officer notice that his or her conduct was constitutionally impermissible.

Accordingly, "overcoming qualified immunity is especially difficult in excessive-force cases." *Morrow v. Meachum*, 917 F.3d 870, 876 (5th Cir. 2019). If "relevant ambiguities, such as whether physical force is justified for a particular purpose or in a particular context"[16] exist, or when the defendant's conduct does not "constitute[] a run-of-the-mill" constitutional violation, a plaintiff cannot rely on general constitutional precedents and must provide the court with a controlling case showing that an "officer under similar circumstances" was held to have violated the Fourteenth Amendment. *White v. Pauly,* 580 U.S. 73, 137 S. Ct. 548, 552, 196 L. Ed. 2d 463 (2017).

Here, Knighten does not rely on materially similar cases to show that Ramsey's conduct violated clearly-established law. Rather, he attempts to use this Court's case law, which he believes establishes a broader principle of law that applies with obvious clarity to this case.[17] However, "[e]ven a cursory consideration

[16] *Colbruno v. Kessler*, 928 F.3d 1155, 1165 (10th Cir. 2019).

[17] *See* Response Brief, at 34-35, 39-40.

of the[] facts—in the light of cases like *Taylor* and *Hope*—makes clear that this is not such a rare case." *See Frasier,* 992 F.3d at 1021–22 (citing *Taylor v. Riojas*, 208 L. Ed. 2d 164, 141 S. Ct. 52 (2020) and *Hope v. Pelzer*, 536 U.S. 730 (2002)). Indeed, this case involves transporting a noncompliant inmate in a wheelchair to an offsite facility, involving a single use of *de minimis* force, which is far from the factual situations presented in the cases cited by Knighten.[18]

Conclusively, Knighten presented no case law that would put an officer on notice that a single, necessary attempt to remove a noncompliant inmate out of wheelchair in order to transport him to a medical provider, is capable of violating

[18] Although Knighten cites two (2) cases that involve wheelchair bound inmates, his parentheticals are entirely misleading. Knighten first cited to *Rhoads v. Miller*, No. 07-CV-306-D, 2008 WL 11411511, at *8 (D. Wyo. Nov. 10, 2008), *aff'd*, 352 F. App'x 289 (10th Cir. 2009) and stated that the court "den[ied] qualified immunity because the arrestee 'presented little threat,' and thus the use of force 'to subdue and forcibly remove [the plaintiff] from his wheelchair was excessive." Response Brief, at 39 n.12. However, Knighten conveniently leaves out that it was not the removing of the arrestee from the wheelchair that was held to be excessive, but rather the officer's forceful use of an **"armbar"** maneuver, which forced the inmate out of the wheelchair and onto the ground. *Rhoads*, No. 07-CV-306-D, 2008 WL 11411511, at *8 (emphasis added). Furthermore, on appeal it was revealed that the officer also allegedly kicked the arrestee in the ribs and stomped on his hands. *Rhoads v. Miller*, 352 F. App'x 289, 290 (10th Cir. 2009).

Knighten then cites to *Wilson v. Rheams*, 494 F. App'x 469, 470 (5th Cir. 2012) to state that Ramsey was on notice that his use of force against a restrained detainee was excessive. Response Brief, at 42. Knighten's parenthetical concerning the case provides: '"flinging [inmate] out of his wheelchair to the floor' without provocation 'sufficient to state a claim of excessive use of force' under the Eighth Amendment." *Id*. In actuality, the court stated "that that with no provocation, [the officer] maliciously applied unnecessary force to him by **choking him**, resulting in near unconsciousness, and by flinging him out of his wheelchair to the floor. *Wilson*, 494 F. App'x at 470 (emphasis added). The court held that the actions as a whole were capable of stating claim for excessive force. *Id.*

the Constitution. That is because "[n]o 'materially similar case' declares [Ramsey's] conduct unconstitutional, and the broad principles of law on which [Knighten] relies do not apply with 'obvious clarity' to the specific situation facing [Ramsey].[19] *See Johnson*, 688 F. App'x at 709. Therefore, Knighten failed to satisfy the clearly-established prong, and Ramsey is entitled to qualified immunity.

III. THE DOCUMENTS REFERENCED IN KNIGHTEN'S COMPLAINT AND THE MARTINEZ REPORT MAY BE REVIEWED BY THIS COURT

Contrary to Knighten's argument, *see* Response Brief, at 14-16, the Court on a *de novo* review "may consider documents referred to in the complaint if the document is central to the plaintiff's claim and the parties do not dispute the documents' authenticity." *Alvarado v. KOB-TV, L.L.C.*, 493 F.3d 1210, 1215 (10th Cir. 2007).[20] Moreover, a document is considered "indisputably authentic" when plaintiff attaches it "as an exhibit to its opposition to [a] 12(b)(6) motion." *GFF Corp. v. Associated Wholesale Grocers, Inc*., 130 F.3d 1381, 1384 (10th Cir. 1997). And when statements in the document contradict the complaint, "the exhibit

[19] Although the sliding-scale approach may no longer be valid in this circuit, the acts complained of here would certainly require the highest level of specificity. *See Lowe v. Raemisch,* 864 F.3d 1205*,* 1211 n.10 (10th Cir. 2017); *Aldaba v. Pickens*, 844 F.3d 870, 874 n.1 (10th Cir. 2016).

[20] As this Court reviews a denial of qualified immunity *de novo* it is for this Court to determine whether the plaintiff alleges a violation of a clearly established right. *Walton v. Powell*, 821 F.3d 1204, 1208 (10th Cir. 2016).

ordinarily controls, even when considering a motion to dismiss." *Bogie v. Rosenberg*, 705 F.3d 603, 609 (7th Cir. 2013); *see also Forrest v. Universal Sav. Bank, F.A.,* 507 F.3d 540, 542 (7th Cir. 2007).

Knighten argues that the Court should not consider any of his statements made "outside of the Complaint." Response Brief, at 24. However, Knighten's Complaint specifically states that he filed his grievance "on the electronic kiosk terminal ...." App. Vol. I at 14. Knighten then attached one of these referenced kiosk documents as an exhibit to his Response to Defendant's Motion to Dismiss. *See* App. Vol. I at 93. In it, he articulates that in his "first message about the situation"[21] he "walk[ed] . . . through [his] booking procedure for almost 5 hours." App. Vol. I at 93. Later, he states in the same kiosk record that "Ramsey tried to dump [him] . . . out of [his] wheelchair." *Id* (emphasis added). The statements in the kiosk record are "indisputably authentic" as Knighten not only attached it in opposition to Defendant's Motion to Dismiss, but he purports to have written them himself. *See GFF Corp*., 130 F.3d at 1384; App. Vol. I at 93. They show that Knighten could, in fact, walk. These statements are clearly central to the Complaint, as they document

[21] *Ali v. Duboise*, 763 F. App'x 645, 648 (10th Cir. 2019) (this Court considered documents attached in the Complaint and noted that the documents were "dated closer to the events in question than the Complaint").

his first account of the "assault[]" Knighten claims occurred at the hands of Ramsey; that is, he "*tried* to dump" him out of his wheelchair. App. Vol. I at 14, ¶ E(2).

Second, this Court may review materials in a *Martinez* report when it does not contradict the complaint and the plaintiff does not contravene the findings in the report.[22]

Through both his Response to the Motion to Dismiss and his Declaration, Knighten had an opportunity to controvert the statements in the *Martinez* report and did not do so. In fact, he attached the aforesaid kiosk grievance to his Declaration. App. Vol. I, at 93. Knighten now argues in his Response Brief that the *Martinez* report contradicts the Complaint; on the contrary, the *Martinez* report provides context when Knighten fails to elaborate in his Complaint. *See* App. Vol. I at 50 (Ramsey "tried to throw me off of the curb"); App. Vol II at 26 ("Inmate Knighten said that Deputy Ramsey then began to shake the wheelchair and lurch it forward in an attempt to force him out of it."); Vol II at 31 ("[R]amsey tried to dump me . . . out of my wheelchair") (emphasis added).

[22] The district court orders a *Martinez* report to determine when a detainee "has a possible[] meritorious claim." *Hall v. Bellmon*, 935 F.2d 1106, 1112 (10th Cir. 1991); *see also 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)) (undisputed statements in the report can "'serve as the basis for dismissal' on a 12(b)(6) motion.'").

Third, Knighten made certain factual admissions in his briefing with the Court.[23] Here, Knighten made various statements throughout his Declaration that provide insight to the context of the alleged "assault."[24] This Court can construe the specific statements cited by Ramsey as an admission, and these admissions can only be used against the party who made them.

CONCLUSION

For the reasons stated in the Opening Brief and herein, this Court should reverse the district court's denial of the portion of the order that denied Ramsey qualified immunity and remand with instruction to dismiss the case in its entirety.

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[23] *See Plastic Container Corp. v. Continental Plastics of Oklahoma, Inc*., 607 F.2d 885, 906 (10th Cir. 1979) (a court can consider "statements in a brief" as an "admission."); *Conte. Bros. Automotive, Inc. v. Quaker State-Slick 50, Inc.*, 165 F.3d 221, 235 (3rd Cir. 1998) (the court noted that "any ambiguity as to the meaning of the scope of [the] allegation [can be] resolved by admission in the plaintiffs' brief. . ."); *Cook v. Reinke*, 484 Fed. Appx. 110, *1 (9th Cir. 2012) (after the plaintiff made a factual statement in a "memo" in support to a motion to dismiss, the Court of Appeals stated "we have the discretion to consider a statement made in briefs to be a judicial admission. . .") (internal citations omitted); *Glick v. White Motor Co*., 458 F.2d 1287, 1290 (3rd Cir. 1972) ("[i]t has been held that judicial admissions are binding for the purpose of the case in which the admissions are made including appeals.").

[24] Knighten's Declaration articulates that Ramsey and he began to have a "heated exchange," that there were only "six [feet]" between the wheelchair and the vehicle when Ramsey asked Knighten to stand up, and that Ramsey's request occurred upon reaching a "curb" that was located between both parties and the transport vehicle. App. Vol. I at 91.

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CERTIFICATE OF COMPLIANCE WITH RULE 32

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B)(ii) because this brief contains 5,995 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 Reply 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.

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CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2022, a true and correct electronic copy of this document was served via the CM/ECF system on counsel of record.

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