

No. 20-7345

United States Court of Appeals
FOR THE FOURTH CIRCUIT

QUENTIN FREEMAN,
Plaintiff-Appellant,

v.

DANIEL DEAS,
Defendant-Appellee.

**Appeal from the United States District Court
for the Eastern District of North Carolina**

BRIEF OF APPELLANT QUENTIN FREEMAN

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STATEMENT OF JURISDICTION

Plaintiff-Appellant Quentin Freeman filed this Section 1983 action in the Eastern District of North Carolina alleging that a prison official, Defendant-Appellee Daniel Deas, used excessive force against him in violation of his Eighth Amendment rights. JA7–17. The district court had jurisdiction under 28 U.S.C. § 1331. On August 26, 2020, the court granted summary judgment to Officer Deas and entered a final order resolving all issues in the case. JA161–162. Mr. Freeman timely filed a notice of appeal on September 8, 2020. JA163. This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. Whether the district erred in concluding that no reasonable jury could find that Officer Deas used excessive force when he repeatedly punched Mr. Freeman.
2. Whether the district court erred in finding that no reasonable officer would have recognized that Officer Deas' actions violated Mr. Freeman's clearly established Eighth Amendment rights.

STATEMENT OF THE CASE

This case concerns Officer Deas' use of force against Mr. Freeman. Mr. Freeman sued Officer Deas under 42 U.S.C. § 1983, arguing that Officer Deas violated his Eighth Amendment right to be free from excessive force. Mr. Freeman now appeals the district court's grant of Officer Deas' motion for summary judgment.¹

I. STATEMENT OF FACTS

On November 30, 2017, several correctional officers escorted Mr. Freeman towards his cell at Maury Correctional Institution. JA94–95. Mr. Freeman was in full restraints, with both his hands and feet shackled. JA11, JA149. Mr. Freeman was “forced to walk without [his] cane,” which he needed at the time. JA149. When Mr. Freeman refused to go further without it, the officers placed Mr. Freeman in a small

¹ This case is on review from an order granting summary judgment to the defendant, and all facts must be construed in a light most favorable to the non-moving party, Mr. Freeman. *See Lee v. Town of Seaboard*, 863 F.3d 323, 327 (4th Cir. 2017). The historical facts set out in this Statement of the Case are drawn from the summary judgment record: two videos of the incident produced by Officer Deas, *see* JA93; Gray Unit Cam 47 and Gray Unit Cam 48 in JA Vol. II; Mr. Freeman's signed statement from his prison grievance form, JA149–150; Officer Deas' Statement of Material Facts, JA54–56; Mr. Freeman's Opposing Statement of Material Facts, JA143–145; affidavits from correctional officers, JA61–65, JA120–129; and the North Carolina Department of Public Safety's Incident Report, JA94–119.

holding cell—one about the size of a phonebooth—while two officers, Sergeant Tyson and Officer Heath, left to retrieve his cane. JA94–95, JA149.

Officers Deas, Crandall, and Andrews remained near the holding cell in the narrow hallway. Gray Unit Cam 48 at 0:01; *see* JA94–95. While Mr. Freeman was waiting, Officer Deas opened the cell door before leaning against the wall across from the holding cell entrance. JA149. He began to taunt and belittle Mr. Freeman, calling him “all types of disrespectful, profane names.” JA149. Mr. Freeman was standing on a chair in the holding cell as he responded to Officer Deas. JA149. Officer Heath and Sergeant Tyson returned without Mr. Freeman’s cane. *See* Gray Unit Cam 48 at 0:01–0:09. At this point, five officers stood at the entrance of the holding cell. Gray Unit Cam 48 at 0:05–0:07.

Officer Deas entered the holding cell and attempted to grab Mr. Freeman’s forearm. Gray Unit Cam 47 at 0:10–0:11. Mr. Freeman pulled away. Gray Unit Cam 47 at 0:10–0:11. Officer Deas “snapped” and yanked Mr. Freeman by his waist chain, using both hands to pull Mr. Freeman off the chair he was standing on. JA149; Gray Unit Cam 47 at

0:11–0:12. Mr. Freeman pulled away again. Gray Unit Cam 47 at 0:12–0:13. Officer Deas stepped back just outside of the holding cell and said something to Mr. Freeman. Gray Unit Cam 47 at 0:13–0:15. Mr. Freeman took a step forward to the opening of the holding cell and attempted to headbutt Officer Deas before he quickly retreated backwards into the holding cell. JA55, JA144; Gray Unit Cam 47 at 0:14–0:16.

Officer Deas immediately entered the holding cell, cocked his right arm, and struck Mr. Freeman. Gray Unit Cam 47 at 0:16–0:17. Officer Deas then “commence[d] to throw a flurry of closed fist punches” to Mr. Freeman’s face, head, and neck while holding Mr. Freeman’s handcuffs with one hand. JA149–150. Mr. Freeman remained trapped in the corner of the holding cell while Officer Deas punched him. Gray Unit Cam 47 at 0:16–0:23. Another correctional officer, Officer Heath, stepped between Mr. Freeman and Officer Deas, using his own body to separate them. JA124; Gray Unit Cam 47 at 0:17–0:24. While punching and “still in a rage,” Officer Deas was forcibly pulled off Mr. Freeman by Officer Heath and two other officers. JA150; Gray Unit Cam 47 at 0:18–0:25. One of those officers walked Officer Deas away by pushing him down the

hall. Gray Unit Cam 47 at 0:25–0:33. As Officer Deas was led down the hall, he walked backwards to face Mr. Freeman and continued to shout at him. Gray Unit Cam 47 at 0:27–0:30. Officer Heath blocked the entrance of the holding cell and stood in close proximity to Mr. Freeman, while the other officer attempted to lead Officer Deas away from the holding cell. Gray Unit Cam 47 at 0:29–0:33. Officer Deas and Mr. Freeman continued to exchange words. Gray Unit Cam 47 at 0:26–0:32. As shown in the image below, the officer escorted Officer Deas until he nearly reached the end of the hallway. Gray Unit Cam 47 at 0:33.

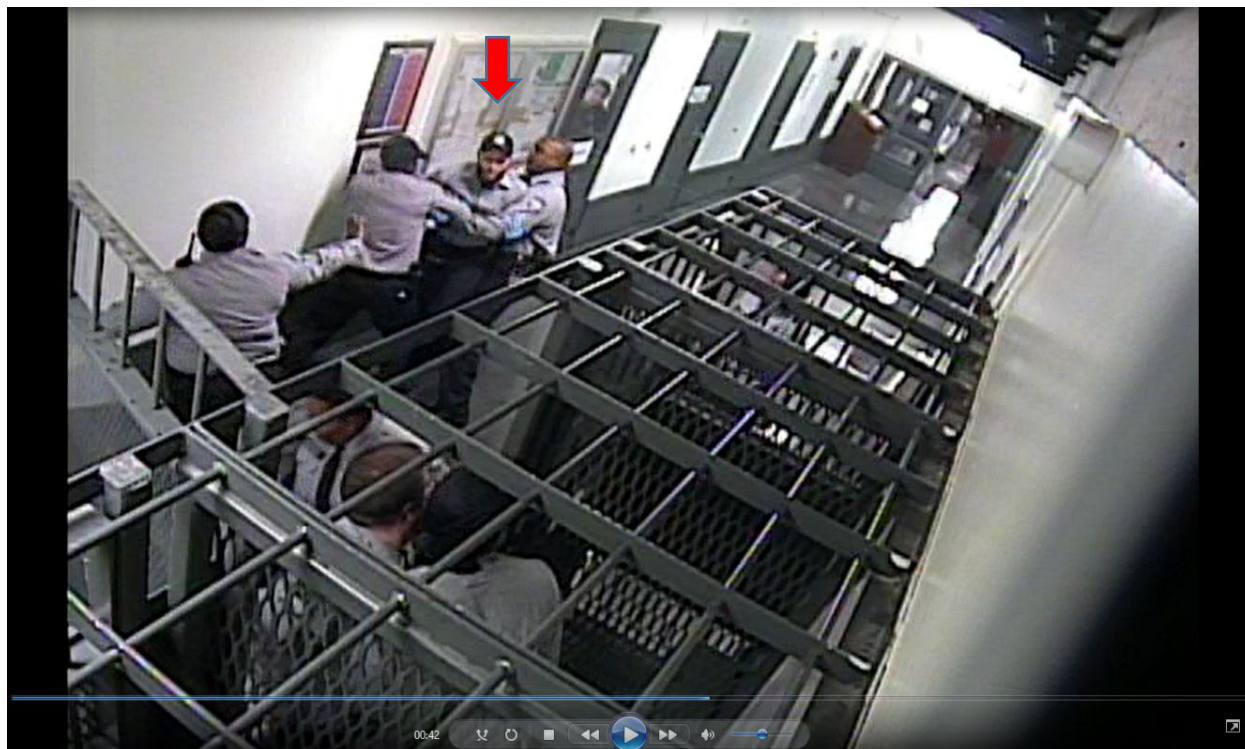


Officer Deas suddenly pushed past the escorting officer and rushed back towards Mr. Freeman, even though Mr. Freeman continued to pose no threat to anyone. JA150; Gray Unit Cam 47 at 0:33–0:35. As Officer Deas was rushing back, he ran into a bystander in the hallway and knocked papers out of her hand. Gray Unit Cam 47 at 0:33–0:35. Three officers intercepted Officer Deas as he attempted to attack Mr. Freeman. Gray Unit Cam 47 at 0:36–0:42; Gray Unit Cam 48 at 0:31–0:38. As shown in the image below, the officers struggled to restrain Officer Deas as he pushed and fought against them. Gray Unit Cam 47 at 0:36–0:42.



Another officer entered the hallway to help pull Officer Deas away. Gray Unit Cam 47 at 0:35–0:42. Two officers then bear-hugged Officer Deas

to restrain him, as shown in the image below, and then dragged him out of the hallway. JA150; Gray Unit Cam 47 at 0:42–0:50. Officer Deas continued to shout at Mr. Freeman as he was escorted away from the scene. JA150; Gray Unit Cam 47 at 0:43–0:49.



II. PROCEDURAL HISTORY

On November 30, 2017, Mr. Freeman filed a grievance with the North Carolina Department of Public Safety’s Inmate Grievance Resolution Board. JA22–24. After three levels of review, Mr. Freeman’s grievance was “resolved” by the Board on January 5, 2018. JA24.

While Mr. Freeman was going through the grievance process, the Department of Public Safety investigated the use of force and prepared

an incident report. JA22, JA94–98. The report included statements from Mr. Freeman and Officer Deas. JA94–115. It also included statements from Sergeant Tyson, and Officers Andrews, Heath, and Crandall. JA94–115. The officers stated that Mr. Freeman attempted to headbutt Officer Deas, but did not mention Officer Deas’ use of force after the headbutt. See JA94–96. Officers Crandall and Andrews stated that they “assisted with removing Officer Deas from the incident,” but none of the officers mentioned that Officer Deas tried to run back to Mr. Freeman. JA95. Mr. Freeman also requested that the Department obtain a statement from Jose Valentine, the inmate who was in the neighboring holding cell during the incident, as shown in the video. JA149–150. No statement from Mr. Valentine was obtained during the investigation. JA135. The report stated that Mr. Freeman was medically screened after the incident and found to have no physical injury at that time. JA97. The report concluded that appropriate action was taken during the incident. JA98.

Mr. Freeman then filed his Section 1983 complaint, claiming a violation of his Eighth Amendment right to be free of cruel and unusual punishment and excessive use of force. JA7–17. During pleading and summary judgment, Mr. Freeman proceeded pro se. A court-appointed

attorney assisted him during discovery and obtained video footage of the incident. JA28–29, JA37–38. After discovery, Officer Deas filed a motion for summary judgment. JA40–42. Mr. Freeman filed a pro se response in opposition. JA137–140. The district court granted Officer Deas’ motion for summary judgment. JA151–161.

The court “presume[d], without deciding” that Mr. Freeman had satisfied the objective component of his Eighth Amendment excessive-force claim. JA156. Applying the four factors outlined in *Whitley v. Albers*, the court concluded that Mr. Freeman had not satisfied the subjective component of his claim. JA156–160 (citing *Whitley v. Albers*, 475 U.S. 312, 321 (1986)). The court found alternatively that Officer Deas was entitled to qualified immunity because a reasonable officer in his position would “not have recognized” that his actions violated the law. JA161.

On September 8, 2020, Mr. Freeman timely filed a notice of appeal. JA163. This Court appointed undersigned counsel and identified as an issue of particular interest whether the district court erred in “granting summary judgment to [Officer Deas] on [Mr. Freeman]’s excessive force claim.”

SUMMARY OF THE ARGUMENT

Officer Deas used excessive force when he angrily beat Mr. Freeman. At the time, Mr. Freeman was in full restraints and backed into the corner of a small holding cell. Other officers needed to intervene and pull Officer Deas off Mr. Freeman. And when Officer Deas broke away and began to charge at Mr. Freeman, multiple officers had to intervene to prevent Officer Deas from attacking Mr. Freeman again. None of this violence served any legitimate purpose. A reasonable jury relying on these facts could find that Officer Deas' actions satisfy both the objective and subjective components required to prove excessive force in violation of the Eighth Amendment.

In cornering and punching Mr. Freeman, Officer Deas' actions went well beyond the level of *de minimis* force, satisfying the objective standard. He also acted with a culpable state of mind. Direct evidence and video footage of the incident show that Officer Deas' actions quickly crossed the line from an effort to maintain order to a malicious infliction of harm. This evidence alone satisfies the subjective standard and warrants reversal.

Alternatively, an analysis of the four *Whitley* factors shows that a reasonable jury could infer that Officer Deas acted with malicious intent. Mr. Freeman's actions did not call for any application of force, let alone the level of force Officer Deas used on him. Officer Deas started punching Mr. Freeman in the head after the attempted headbutt, once Mr. Freeman had retreated into the corner of the holding cell. And because Mr. Freeman posed no threat to Officer Deas or any other officer, a reasonable jury could conclude that Officer Deas' punches were intended to retaliate against Mr. Freeman rather than to maintain order.

Officer Deas is not entitled to qualified immunity. The Supreme Court and this Court have long recognized that the Eighth Amendment prohibits prison officials from using force in retaliation or for punishment. Officer Deas was on fair notice that his actions violated that long-standing prohibition. This Court should reverse the district court's grant of summary judgment to Officer Deas and remand to the district court for further proceedings.

STANDARD OF REVIEW

This Court reviews grants of summary judgment de novo, including grants based on qualified immunity. *See Lee v. Town of Seaboard*, 863 F.3d 323, 327 (4th Cir. 2017); *see also Booker v. South Carolina Dep’t of Corr.*, 855 F.3d 533, 537 (4th Cir. 2017). Summary judgment is improper where the non-movant raises a “genuine issue of material fact.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986). “A dispute is genuine if a reasonable jury could return a verdict for . . . the nonmoving party.” *Brooks v. Johnson*, 924 F.3d 104, 112 (4th Cir. 2019). At this stage, evidence must be viewed “in the light most favorable to the nonmoving party.” *Lee*, 863 F.3d at 327.

ARGUMENT

I. A REASONABLE JURY COULD FIND THAT OFFICER DEAS USED EXCESSIVE FORCE WHEN HE REPEATEDLY PUNCHED MR. FREEMAN.

Eighth Amendment excessive force claims include both an objective and subjective component. *Brooks*, 924 F.3d at 112. Mr. Freeman has satisfied the objective component by showing that the force applied “was sufficiently serious to establish a cause of action.” *Id.* Officer Deas did not contest the objective component below, *see* JA43–51, and for good reason: the objective component is a low bar, requiring merely “something more than ‘*de minimis*’ force.” *Brooks*, 924 F.3d at 112 (quoting *Hudson v. McMillian*, 503 U.S. 1, 10 (1992)). Officer Deas’ multiple punches to Mr. Freeman’s head while he was handcuffed easily meets this low standard. *See Wilkins v. Gaddy*, 559 U.S. 34, 38–39 (2010).

This case turns on the subjective component, which focuses on whether Officer Deas “acted with a sufficiently culpable state of mind.” *Brooks*, 924 F.3d at 112. As applied here, the question is whether Officer Deas used force “in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.” *Id.* at 113 (quoting *Whitley*, 475 U.S. at 320–21). There is strong direct and

circumstantial evidence from which a reasonable jury could conclude that Officer Deas used force maliciously to hurt Mr. Freeman. Alternatively, the *Whitley* factors show that a reasonable jury could rely on the circumstantial evidence in the record to conclude that Officer Deas “inflict[ed] pain not to protect safety . . . but to punish or retaliate against [Mr. Freeman] for his prior conduct.” *Dean v. Jones*, 984 F.3d 295, 302 (4th Cir. 2021).

A. Compelling direct and circumstantial evidence shows that Officer Deas acted with malicious intent.

Courts typically examine an officer’s intent by applying the *Whitley* factors, but an analysis of these factors is unnecessary where an officer’s intent can be “proven directly or through other circumstantial evidence.” *Dean*, 984 F.3d at 309. Here, there is strong direct and circumstantial evidence showing that Officer Deas lost control, flew into a rage, and punched Mr. Freeman in the head—not to maintain prison order and safety but to maliciously inflict harm.

A reasonable jury could find that Officer Deas acted with impermissible motive because he verbally taunted Mr. Freeman moments before punching him. While Mr. Freeman was waiting in the holding cell for his cane to be retrieved, Officer Deas approached the cell,

opened the door, and “in an unprofessional manner” began to “taunt, . . . belittle,” and call Mr. Freeman “all types of disrespectful, profane names.” JA149. Such comments can constitute direct proof of an impermissible motive. *Dean*, 984 F.3d at 308–09. In *Dean*, for example, this Court concluded that an officer shouting “[y]ou done fucked up!” to a plaintiff before beating him in retaliation for a headbutt constituted “direct evidence that [the officer] acted with an impermissible retaliatory motive.” *Id.* A reasonable jury could likewise conclude that Officer Deas’ aggressive comments constituted direct proof that Officer Deas was “angry” at Mr. Freeman and “used force punitively” when he punched Mr. Freeman moments later. *Id.* at 309.

Officer Deas’ rage continued after he punched Mr. Freeman. After being pulled off Mr. Freeman by three officers and escorted away from the holding cell, Officer Deas snapped and attempted to sprint back to assault Mr. Freeman again. Gray Unit Cam 47 at 0:33–0:42. Nothing warranted his return. Yet, Officer Deas was so intent on attacking Mr. Freeman a second time that he attempted to bulldoze past his fellow officers for another chance to renew his attack. Gray Unit Cam 47 at 0:33–0:42. A reasonable jury viewing this belligerent conduct could

conclude that Officer Deas’ use of force—punching Mr. Freeman—only moments earlier was a malicious attempt to cause harm.

The district court erred by focusing completely on the *Whitley* factors and ignoring Officer Deas’ statements and malicious attempt to attack Mr. Freeman a second time. Because there was strong “direct [and circumstantial] evidence on which a jury could have relied to find malicious intent,” the district court “erred in granting summary judgment” to Officer Deas. *Dean*, 984 F.3d at 309.

B. The *Whitley* factors show that Officer Deas used force maliciously to punish Mr. Freeman for his prior conduct.

The direct evidence of Officer Deas’ punitive intent is sufficient on its own to demand reversal. But Officer Deas’ state of mind may also be inferred by analyzing the four factors set out in *Whitley*: (1) “the need for the application of force”; (2) “the relationship between the need and the amount of force that was used”; (3) “the extent of any reasonably perceived threat that the application of force was intended to quell”; and (4) “any efforts made to temper the severity of a forceful response.” *Iko v. Shreve*, 535 F.3d 225, 239 (4th Cir. 2008) (quoting *Whitley*, 475 U.S. at 321). All four factors weigh in favor of Mr. Freeman.

1. *Officer Deas' use of force was unnecessary because Mr. Freeman was not a threat to safety.*

Looking to the first and third factors, a reasonable jury could conclude that Officer Deas' use of force was unnecessary. Mr. Freeman posed no threat at all to Officer Deas or anyone else: his hands and feet were cuffed, he was in a small cell by himself, and he was surrounded by five other officers. *See Brooks*, 924 F.3d at 116 (finding that an inmate presented “no immediate physical safety risk” because he was “handcuffed and surrounded by officers”). Because Mr. Freeman was not a threat to prison order or safety, Officer Deas' use of force served no penological purpose and was “unjustified.” *Dean*, 984 F.3d at 305; *see also Thompson v. Virginia*, 878 F.3d 89, 103–04 (4th Cir. 2017) (holding that the “infliction of pain and suffering without penological justification violates the Eighth Amendment”). The fact that Officer Deas still punched Mr. Freeman, “who [was] ‘restrained . . . and posing no physical threat,’” only confirms that he acted in retaliation, not for protection. *Dean*, 984 F.3d at 302 (quoting *Thompson*, 878 F.3d at 102).

Officer Deas claims to have used force after the attempted headbutt to “prevent an assault” and “regain control” of Mr. Freeman. JA121. But the video evidence tells a different story. Officer Deas applied force when

Mr. Freeman was cornered in the small holding cell with his hands and feet shackled, unable to assault anyone. This Court has seen this case before. In *Dean*, this Court denied summary judgment to an officer who assaulted an incarcerated individual “merely seconds” after a headbutt because that individual no longer posed a threat. 984 F.3d at 304–06. Like that officer, Officer Deas punched Mr. Freeman in the head after any threat to prison safety had been “neutralized.” *Id.* at 305. A reasonable jury could therefore conclude that Officer Deas used force “not to protect officer safety but instead to retaliate against [Mr. Freeman] for his head-butt.” *Id.* at 306.

The district court suggests that after the attempted headbutt Mr. Freeman “continued struggling against Officer Deas until other officers intervened.” JA158. But the video does not show Mr. Freeman resisting Officer Deas in any way after Officer Deas began to punch him. Gray Unit Cam 47 at 0:16–0:22. And viewing the facts in the light most favorable to Mr. Freeman, a reasonable jury could find that Mr. Freeman couldn’t have resisted or even properly defended himself because both his hands and feet were cuffed, and he had been cornered in the small holding cell by four or five officers. *See Brooks*, 924 F.3d at 116.

2. *The amount of force Officer Deas used was disproportionate to any legitimate need for force.*

Officer Deas' use of force was also grossly disproportionate to any genuine threat Mr. Freeman might have posed. Given that Mr. Freeman was in full restraints and surrounded by multiple officers, Officer Deas had no need to punch Mr. Freeman at all, let alone multiple times in the head. *See Dean*, 984 F.3d at 307 (holding that officers used “disproportionate” force by beating Mr. Dean “considering that Dean was at all times in handcuffs and substantially outnumbered by the officer surrounding him”).

In its analysis of the second factor, the district court failed to consider Mr. Freeman's signed statement that Officer Deas “[threw] a flurry of closed fist punches” to his head, face, and neck. JA150. Instead, the district court referred only to Officer Deas' use of “hands-on force”—completely obscuring the degree of force used. JA158. This was improper. The district court can only reject Mr. Freeman's account of the facts if the video renders it “blatantly and demonstrably false.” *Harris v. Pittman*, 927 F.3d 266, 276 (4th Cir. 2019). The view of Officer Deas and Mr. Freeman on the video was blocked after the first strike, so the district court should have fully adopted Mr. Freeman's account. Fully crediting

Mr. Freeman's facts, a reasonable jury could find Officer Deas' multiple punches disproportionate to any genuine threat Mr. Freeman posed, giving rise to "an inference of impermissible punitive intent." *Brooks*, 924 F.3d at 117 (internal quotation marks and citation omitted).

Officer Deas' multiple punches to Mr. Freeman's head also cannot be justified by Mr. Freeman's refusal to leave the holding cell without his cane, as the district court suggests. JA157 (finding that the "use of force was a necessary response to plaintiff's non-compliance with verbal commands"). This minor noncompliance cannot justify the use of force that "punish[es] an inmate for intransigence" or "retaliate[s] for insubordination." *Brooks*, 924 F.3d at 113. This Court has held, for example, that a "blow to the head" of a noncompliant detainee does "not constitute a good faith effort to maintain or restore discipline." *Sawyer v. Asbury*, 537 F. App'x 283, 295 (4th Cir. 2013), *abrogated on other grounds by Kingsley v. Hendrickson*, 576 U.S. 389 (2015). Just because Mr. Freeman refused to leave the holding cell does not mean Officer Deas was entitled to "take the gloves off" and repeatedly hit him. *See id.* at 294.

The degree of force Officer Deas employed during the incident also violated the prison's use-of-force policy. The Maury Correctional Institute's Operating Procedures state that the degree of force necessary should be determined based on "the number of staff present, the types of resistance employed and the size and strength of the person's involved and similar criteria." JA84. Here, there were five officers surrounding the holding cell during the incident (including Officer Deas). Mr. Freeman was fully restrained and needed a cane to walk when the incident took place. Under the prison's use of force guidelines, there was no reason for Officer Deas to use multiple punches. This violation of the policy could lead a reasonable jury to conclude that Officer Deas was not acting with a legitimate purpose. *See Miller v. Leathers*, 912 F.2d 1085, 1088 (4th Cir. 1990) (concluding that an officer's violation of the prison's regulations "supports an inference that [the officer] intended to retaliate against [the plaintiff]").

This conclusion is confirmed by the actions of the other officers in the hallway who did not treat Mr. Freeman as a threat. Officer Heath, for example, was able to maintain control of Mr. Freeman by simply placing his hands on Mr. Freeman's shoulders or standing calmly in the

doorway of the holding cell. JA125; Gray Unit Cam 47 at 0:30–0:48. Officer Heath’s ability to deescalate the situation without punching Mr. Freeman at all emphasizes the disproportionate nature of Officer Deas’ response. And this contrast “is a powerful indicator that a need to deploy violent force was not apparent to a reasonable officer.” *See Sawyer*, 537 F. App’x at 297.

3. *Officer Deas did nothing to temper the severity of his response to Mr. Freeman.*

Officer Deas was out of control. He yanked Mr. Freeman off the chair and punched Mr. Freeman multiple times. And when fellow officers interceded to protect Mr. Freeman, Officer Deas pushed and struggled with the other officers to continue the violence. A reasonable jury viewing these facts could easily conclude that Officer Deas not only failed to temper the severity of his response, but instead actively escalated the situation.

In considering this final factor, the district court improperly adopted Officer Deas’ version of events. The district court determined that the use of force was mitigated here because the video “reflects that plaintiff was ordered, by gesture at minimum, to leave the cell” prior to any use of force. JA159. Mr. Freeman, however, denies that a verbal

command to get off the chair was made, JA143, and it is not clear from the video whether an officer gestured to Mr. Freeman to leave the cell. The district court could not resolve this dispute in favor of Officer Deas. But even accepting Officer Deas' version of the facts does not preclude a finding of his retaliation or malicious intent. *See Brooks*, 924 F.3d at 117 (citation omitted) (holding “that ‘verbal attempts’ to reason with and calm an unruly detainee before resort to force do *not* preclude an inference that force was applied maliciously.”). Even if a command was made, that still did not give Officer Deas permission to punch Mr. Freeman in the head.

The district court also concluded that the severity of the force was mitigated by the actions of other officers because they “immediately intervened.” JA159. But a reasonable jury viewing the video could conclude the opposite: the other officers had to intervene—twice—because Officer Deas was improperly acting with malicious intent when he punched Mr. Freeman multiple times. The other officers' actions show that Officer Deas was the threat to prison order and safety, not Mr. Freeman. Indeed, it took multiple officers to subdue Officer Deas and

forcibly remove him from the hallway, while it took only one officer to calmly keep Mr. Freeman, who was not resisting, in the holding cell.

II. The District Court Erred In Granting Officer Deas Qualified Immunity.

Correctional officers are generally liable for violating an incarcerated individual's constitutional rights under Section 1983 unless a reasonable officer in their position would lack fair notice that the right was "clearly established" at the time of their unconstitutional conduct. *Thompson*, 878 F.3d at 97. Given this Court's precedent, any reasonable officer in Officer Deas' shoes would have fair notice that assaulting a restrained incarcerated-individual, in retaliation and without any law enforcement purpose, is a violation of that individual's right to be free from excessive force. Officer Deas is therefore not entitled to qualified immunity, and the district court's contrary holding should be reversed.

Officer Deas violated Mr. Freeman's well-established Eighth Amendment rights by maliciously striking Mr. Freeman with closed fists. This Court has held that it was clearly established "in 2015—and for many years before that—that inmates have a right to be free from pain inflicted maliciously and in order to cause harm." *Dean*, 984 F.3d at 310 (collecting cases, finding the rule established when the events therein

took place); *see also Thompson*, 878 F.3d at 102–06 (collecting cases and finding the same right clearly established in 2010).

Officer Deas also violated Mr. Freeman’s clearly established rights when he used force to punish Mr. Freeman for his prior insubordination and misbehavior. This Court’s case law, since well before 2017, has made clear that correctional officers like Officer Deas cross the line from good-faith efforts to protect officer safety to malicious harm “when they use force to *punish* an inmate for prior misconduct or intransigence”—the kind of punishment an officer might mete out for an attempted headbutt. *Dean*, 984 F.3d at 310–11 (emphasis added) (holding that two officers who used force to punish an inmate for two separate headbutts in 2015 were not entitled to qualified immunity). Viewing the facts in the light most favorable to Mr. Freeman, as this Court must, *Dean* and the cases it relies on show that Officer Deas was on fair notice that attacking Mr. Freeman in retaliation for his prior misconduct would violate his long-established Eighth Amendment right to be free from excessive force.

It has also been clearly established that any force used after an incarcerated individual is “subdued and no longer pose[s] a risk . . . could give rise to an inference of ‘wanton punishment’ in violation of the Eighth

Amendment.” *Dean*, 984 F.3d at 311; *see also Thompson*, 878 F.3d at 102–05 (collecting cases). This is true “even if force might have been justified to control the inmate *only moments before*.” *Dean*, 984 F.3d at 310 (emphasis added). Officer Deas exacted wanton punishment, long forbidden by the law, by assaulting Mr. Freeman after he posed no threat. *See, e.g., Iko*, 535 F.3d at 239–40; *cf. Meyers v. Baltimore Cnty.*, 713 F.3d 723, 734 (4th Cir. 2013) (holding that officers who use “gratuitous” force against “a secured, unarmed citizen . . . are not entitled to qualified immunity”). The short time between the missed headbutt and the assault does not change this. Given this case law, Officer Deas had fair notice that he could not intentionally attack Mr. Freeman for prior conduct once he no longer posed a threat.²

² Should this Court reverse the district court’s holding and remand for further proceedings, Mr. Freeman will need representation. This Court should recommend that the district court appoint counsel to “assist in litigating the case, consistent with applicable local rules and procedures.” *See Brooks*, 924 F.3d at 122 n.9 (recommending that, on remand, the district court appoint counsel to assist in carrying a case forward). Undersigned counsel would also work to find representation for Mr. Freeman.

CONCLUSION

For these reasons, this Court should reverse the district court's grant of summary judgment and remand for further proceedings.

Respectfully submitted,

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Dated: February 15, 2023

STATEMENT REGARDING ORAL ARGUMENT

Mr. Freeman respectfully requests oral argument pursuant to Fed. R. App. P. 34(a) and Fourth Circuit Local Rule 34(a). This case presents an important question regarding the use of direct evidence to establish the subjective component of Eighth Amendment excessive-force claims. The answer to this question will have significant implications for Mr. Freeman and similarly situated Section 1983 plaintiffs. Oral argument would assist the Court in answering this question. Oral presentation also would aid this Court's resolution of this case's fact-intensive inquiry into Officer Deas' state of mind during the use of force incident under the *Whitley* factors.

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 5,036 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Salvatore Mancina, certify that on February 15, 2023, I electronically filed the foregoing Opening Brief of Appellant via this Court's CM/ECF system, which will send notice of such filing to counsel of record in the above-captioned case.

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