

No. 20-7345

In the
United States Court of Appeals
for the Fourth Circuit

QUENTIN FREEMAN,
Plaintiff-Appellant,

v.

DANIEL DEAS,
Defendant-Appellee.

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

BRIEF OF DEFENDANT-APPELLEE

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CORPORATE DISCLOSURE STATEMENT

I certify, pursuant to Federal Rule of Appellate Procedure 26.1 and Local Rule 26.1, that appellee is not in any part a publicly held corporation, a publicly held entity, or a trade association, and that no publicly held corporation or other publicly held entity has a direct financial interest in the outcome of this litigation.

Dated: April 10, 2023

/s/ Lisa M. Taylor

Lisa M. Taylor

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INTRODUCTION

“[P]rison officials [are] tasked with the difficult task of operating a detention center . . . [while doing what] is necessary to protect the well-being of prison employees, inmates, and the public.” *Porter v. Clarke*, 923 F.3d 348, 357 (4th Cir. 2019). Defendant in this case was performing that difficult task when, on November 30, 2017, Plaintiff refused to comply with orders, and instead, attempted an attack upon Defendant, Officer Daniel Deas. Officer Deas responded appropriately by complying with the facility’s use-of-force policy when he used hands-on force against Plaintiff. Plaintiff sustained no injury as a result of this incident.

The entire encounter was captured on prison security video and investigated by prison officials. Ultimately, the investigation concluded that Officer Deas took appropriate action when Plaintiff refused to comply with lawful orders and attempted his assault upon Officer Deas by headbutting him.

Despite sufficient uncontested facts and clear security video of the use-of-force event, Plaintiff now contends that summary judgment in Defendant’s favor was improper. A review of the record makes clear that no jury could find that Officer Deas used excessive force against Plaintiff

when he attempted to regain control of Plaintiff and protect himself against an attempted violent assault.

STATEMENT OF FACTS

A. Use-of-Force Incident.

On November 30, 2017, Plaintiff was an inmate housed in the Gray Unit at Maury Correctional Institution in Hookerton, North Carolina. JA11. While Plaintiff was being escorted back to his cell from the receiving room, he refused to continue walking because he did not have his cane, and was therefore placed in a holding cubicle. JA11. While there, and despite his insistence that he needed his cane to walk, Plaintiff chose to stand on top of the seat in the holding cell while he waited for officers to retrieve his cane. JA54, JA11.

The security video captured the entirety of the use-of-force incident at issue here, although no audio was recorded. Gray Unit Cam 47; Gray Unit Cam 48. As evidenced by security camera footage, the holding cubicle door remained open throughout the incident. Gray Unit Cam 47; Gray Unit Cam 48. It is clear that Officer Deas and Plaintiff exchanged words in the moments directly before hands-on force was applied. Gray Unit Cam 47 at 0:00 – 0:10.

During that time another correctional officer was standing in front of the open cubicle door and gestured for Plaintiff to exit. Gray Unit Cam

47 at 0:05. Plaintiff admits that he refused to exit the holding cubicle when instructed to do so. JA55 at ¶ 8; JA143 at ¶ 8.

As Plaintiff continued to stand on top of the seat inside the holding cell, Officer Deas entered the cell and applied a soft-touch contact to Plaintiff's right arm. Gray Unit Cam 47 at 0:10-0:11. Plaintiff immediately jerked away from Officer Deas. Gray Unit Cam 47 at 0:11; JA55 at ¶ 10; JA143 at ¶ 10. Officer Deas then attempted to gain a better hold on Plaintiff by taking control of his restraints. Gray Unit Cam 47 at 0:12-0:14; JA55 at ¶ 11; JA143 at ¶ 11. Plaintiff again pulled away from Officer Deas. Gray Unit Cam 47 at 0:13-0:14; JA55 at ¶ 12; JA143 at ¶ 12. Officer Deas then retreated and stepped out of the holding cubicle, creating space between Plaintiff and himself. Gray Unit Cam 47 at 0:14; JA121 at ¶ 12.

After Officer Deas exited the holding cubicle, Plaintiff escalated the situation by taking at least two steps toward the open cubicle door and attempting to headbutt Officer Deas. Gray Unit Cam 47 at 0:14 – 0:15; JA55 at ¶ 13; JA143 at ¶ 13. In response to the attempted headbutt, Officer Deas attempted to strike Plaintiff using his right hand. Gray Unit Cam 47 at 0:17; JA55 at ¶ 14. Plaintiff and Officer Deas then retreated

into a corner of the holding cubicle. Gray Unit Cam 47 at 0:17. Although Plaintiff is no longer visible at that point in the video, Officer Deas's shoulders remain visible, and reveals that it appears that he struck Plaintiff one time. Gray Unit Cam 47 at 0:17 – 0:23. Another corrections officer then intervened. Gray Unit Cam 47 at 0:18-0:24.

Plaintiff then attempted to push past three officers and leave the holding cubicle to go in Officer Deas's direction, at which point two corrections officers physically held him back. Gray Unit Cam 47 at 0:29-0:33. Plaintiff continued to yell at Officer Deas as he retreated down the hall. Gray Unit Cam 47 at 0:29 – 0:34. Officer Deas never used any other hands-on force against Plaintiff after corrections officers intervened at the 0:24 mark of the Gray Unit Cam 47 video.

Directly following the use-of-force incident, Plaintiff was medically screened, where no injuries were noted. JA55 at ¶¶ 16-17; JA143 at ¶¶ 16-17.

B. North Carolina Department of Public Safety Use-of-Force Policy

Pursuant to NC DPS policies and procedures, correctional staff are permitted to use “whatever degree of force that reasonably appears

necessary to defend the officer or a third party from imminent assault.”

JA67. Hands-on physical force, including approved CRDT (Control, Restraints, Defensive Techniques), may be used by correctional staff to restrain or move a non-aggressive, non-complaint inmate. JA69. Hands-on physical force is also authorized to restrain or otherwise control an inmate when control through communication has failed or is not feasible.

JA85. Hands-on physical force may also be used to defend the Officer or a third party from imminent assault and to ensure compliance with a lawful order. *Id.* . Finally, hands-on physical force is permitted to subdue an aggressive offender when pepper spray is not effective or is not feasible. JA69.

C. Internal Use-of-Force Investigation.

The subject use-of-force incident was investigated pursuant to North Carolina Department of Public Safety policy. JA79; JA94-119. The investigation results were memorialized, JA98, and revealed the conclusion that Officer Deas took appropriate action in response to Plaintiff’s attempted headbutting. JA98. It was also noted in the investigation report that hands-on force was used to control the inmate. JA98.

D. The District Court Grants Summary Judgment in Defendant's Favor.

After the conclusion of discovery, Officer Deas filed a motion for summary judgment. JA40-42. Plaintiff filed a *pro se* response in opposition, including an Opposing Statement of Material Facts in which he admitted seventeen of Defendant's material facts and denied just five. JA137-145. Specifically, Plaintiff admitted to: standing on the seat inside the holding cubicle (§ 6); refusing to exit the holding cubicle when instructed to do so (§ 8); jerking away from Officer Deas (§ 10); pulling away from Officer Deas when he attempted to gain better hold of Plaintiff by taking control of his restraints (§§ 11-12); attempting to headbutt Officer Deas (§ 13); and, that Plaintiff was medically screened after the incident and no injuries were noted (§§ 16-17).

The district court granted Defendant's motion for summary judgment, concluding that Plaintiff failed to satisfy the subjective component of his excessive force claim because no reasonable jury would find that Officer Deas acted maliciously or for the purpose of causing harm. JA156-160. The court alternatively held 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.

This timely appeal followed. JA163.

SUMMARY OF THE ARGUMENT

There is no direct or circumstantial evidence of record that supports a finding that Officer Deas intended to maliciously and sadistically inflict pain on Plaintiff. Alternatively, an application of the factors announced in *Whitley v. Albers*, 475 U.S. 312, 320-21 (1986), establishes that no malicious intent can be imputed or assumed where it is clear that there was a need to exert force on an unruly, non-compliant, and violent inmate, and when that force was proportional to that need. Because Officer Deas did not violate a constitutional right when he exerted force against Plaintiff, he is alternatively entitled to qualified immunity.

ARGUMENT

Standard of Review

This Court reviews a district court’s ruling on motions for summary judgment de novo. *Bostic v. Schaefer*, 760 F.3d 352, 370 (4th Cir. 2014).

Discussion

I. A REASONABLE JURY COULD NOT FIND THAT OFFICER DEAS USED EXCESSIVE FORCE AGAINST PLAINTIFF ON NOVEMBER 30, 2017.

The Eighth Amendment protects inmates from the “unnecessary and wanton infliction of pain[.]” *Whitley v. Albers*, 475 U.S. 312, 319 (1986). “[A] prison official violates the Eighth Amendment only when two requirements are met.” *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). First is the deprivation of an objectively “sufficiently serious” basic human need, and second, is a “sufficiently culpable state of mind.” *Id.* In analyzing an excessive force claim, the court will first inquire “whether the prison official acted with a sufficiently culpable state of mind (subjective component).” *Parker v. Stevenson*, 625 F. App’x 196, 198 (4th Cir. 2015).

The district court assumed without deciding that Plaintiff’s alleged injuries satisfied the objective component of an excessive-force claim. JA156. Although Plaintiff sustained no injury as a result of the use-of-

force event, Defendant does not contest this point. *See Iko v. Shreve*, 535 F.3d 225 (4th Cir. 2008) (noting even a “minor” injury can be actionable if it “rises above the level of *de minimus* harm”). Therefore, applied here, this inquiry examines the subjective component of whether Officer Deas used force “in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” *Wilkins v. Gaddy*, 559 U.S. 34, 37 (2010) (per curiam) (quotations omitted).

A. There Is No Direct or Circumstantial Evidence of Record That Shows Officer Deas Acted with Malicious Intent.

Plaintiff first contends that there is sufficient direct and circumstantial evidence to establish that Officer Deas acted with malicious intent such that application of the *Whitley* factors is inappropriate, and summary judgment was therefore improper. Br. at 15-16. Specifically, Plaintiff points to two pieces of evidence: (1) Plaintiff’s own contention that Officer Deas taunted, belittled, and called him disrespectful and profane names (Br. at 16 (citing JA149)); and, (2) video footage showing Officer Deas’s actions after the use-of-force incident had concluded (Br. at 16-17). Neither is sufficient for a reasonable jury to conclude that Officer Deas acted with malicious intent directly before and during the use-of-force incident.

The Local Civil Rules of Practice and Procedure in the Eastern District of North Carolina require parties to submit statements of material facts with a motion for summary judgment. EDNC Local R. 56.1. Plaintiff responded to Defendant's material facts, but did not propose additional facts that he believed would be material to Defendant's summary judgment motion. Specifically, Plaintiff did not offer any additional material facts to substantiate his contention that Officer Deas verbally taunted, belittled, and called him disrespectful and profane names directly before the use-of-force incident. Br. at 15-16. Yet, on appeal, Plaintiff now seeks to rely on material facts that are not supported or confirmed by the record evidence to contend that summary judgment was improper.

Assuming, *arguendo*, that it is proper to consider Plaintiff's contention that Officer Deas verbally accosted him prior to the hands-on incident, this fact is nevertheless immaterial to the Court's analysis. A fact is "material" if it "might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Here, even assuming the accuracy of Plaintiff's assertions, the fact that

Officer Deas may have used inappropriate language during the course of the incident simply does not support Plaintiff's Eight Amendment claims.

In support of his argument, Plaintiff relies exclusively upon this Court's opinion in *Dean v. Jones*, 984 F.3d 295 (4th Cir. 2021). Br. at 16. Plaintiff is correct that this Court has held that officer comments *can* be evidence of motive, but the comments here do not qualify under that caselaw. Specifically in *Dean*, officers allegedly pushed the claimant into a closet—outside of security video view—and viciously beat him in retaliation for Plaintiff previously headbutting an officer. *Id.* at 300. That claimant alleged the officers shouted “[y]ou done fucked up!” before beating and causing him to suffer severe injuries, including a fractured nose that required surgery. *Id.* at 300-301.

In *Dean*, the plaintiff's factual allegations contrasted drastically with the officers' contentions that the plaintiff and the officers “ended up in the closet by accident” after the “group's collective momentum caused them to fall into a nearby closet” where the plaintiff struck his head on a protruding shelf and the concrete floor. *Id.* at 300. In that instance, this Court held that the plaintiff's factual contention regarding the officer's statement was material given the largely contrasting set of facts, and a

jury crediting the plaintiff's account could have found that, based upon the comments made to that plaintiff, the officers intended to punish him for his intransigence. *Id.* at 306-307. Accordingly, in light of those facts, this Court held that summary judgment was improper in *Dean*.

Unlike the opaque facts in *Dean*, here, security video of the entire approximate seven-second-long use-of-force event delineates the sequence of events, and the propriety of Officer Deas's actions in response to Plaintiff's attempted headbutt. Even if Plaintiff's contention that Officer Deas berated him and called him "all types of disrespectful, profane names" is assumed to be true, those facts are immaterial as Plaintiff's assault against Officer Deas occurs *after* the alleged utterances. In contrast, in *Dean* the plaintiff had already assaulted the officers before the correctional officer's comment, and before the hands-on force was applied. In that case, that confluence of events created a question of fact as to whether the comment could cause a jury to find that the subsequent use-of-force was applied as punishment.

Ultimately, any comments uttered by Officer Deas are immaterial as the security video subsequently reveals (1) another officer motioning Plaintiff to leave the cell; (2) Officer Deas's application of soft-touch to

Plaintiff's right arm; (3) Officer Deas's pulling on Plaintiff's restraints, (4) multiple instances of Plaintiff failing to comply with Officer Deas's commands and jerking away from him; (5) Officer Deas's retreat from Plaintiff and exit from the holding cubicle; and, (6) Plaintiff's attempted violent assault against Officer Deas. Accordingly, Plaintiff's claim that officer Deas previously employed offensive language simply does not support his contention that the district court erred when it entered summary judgment.

Plaintiff also contends that Officer Deas's physical conduct *after* the use-of-force incident is both direct and circumstantial evidence of his subjective intent *at the time* of the use-of-force incident. Br. at 16-17. Plaintiff makes this assertion without providing any precedential substantiation that physical conduct that occurs *after* the hands-on force event is relevant for informing the officer's subjective intent at the time force was applied. Rather, this Court has held that the relevant inquiry is the officer's subjective intent at the time the force is applied. *See, e.g., Brooks v. Johnson*, 924 F.3d 104 (4th Cir. 2019) (holding while the first taser shock may have been made in a "good faith effort" to restore discipline, the second and third shocks may cause a reasonable jury to

question if the shocks were intended to punish the inmate); *Mann v. Failey*, 578 F. App'x 267 (4th Cir. 2014) (focusing on officers' comments directly before and during the application of force in determining what their intent was); *Dean*, 984 F.3d 295 (analyzing officers' conduct during the use-of-force incident).

Here, Officer Deas exerted hands-on force against Plaintiff a single time. It is true that after the single use-of-force event Officer Deas attempted to confront Plaintiff, but was instead moderated by other officers. Yet, despite that sequence of events, Officer Deas did not again use hands-on force against Plaintiff. As this Court remarked with *Brooks*, intent can change throughout the course of an event.

Specifically, in *Brooks* this Court held that while a first taser shock may have been done in good faith, subsequent taser shocks in quick succession after the inmate had been incapacitated causes the “picture [to] change[].” *Brooks*, 924 F.3d at 114. Similarly, it is possible for Officer Deas's subjective intent to change from the time of the application of hands-on force to the moments afterwards, particularly since Plaintiff continued to yell at him and had to be held back by another officer. Therefore, despite Plaintiff's availing, evidence of Officer Deas's conduct

after the use-of-force incident concluded is not relevant to informing his subjective intent *before* and *during* the hands-on force.

Accordingly, the district court correctly relied upon the *Whitley* factors to analyze whether Plaintiff could meet the subjective component of his excessive force claim. Plaintiff has failed to do so.

B. The District Court Properly Applied the *Whitley* Factors and Found No Reasonable Jury Could Find That Officer Deas Used Excessive Force.

In granting summary judgment for Defendant, the district court properly applied the *Whitley* factors to conclude that a reasonable jury could not find that Officer Deas had the subjective intent to maliciously and sadistically cause harm to Plaintiff. JA156-160. In determining whether prison officials have acted maliciously and sadistically, a court should balance: (i) “the need for the application of force,” (ii) “the relationship between the need and the amount of force that was used,” (iii) “the extent of the injury inflicted,” (iv) “the threat to the safety of staff and inmates, as reasonably perceived by the responsible officials[.]” and (v) “any efforts made to temper the severity of a forceful response.” *Whitley*, 475 U.S. at 320-21. “Moreover, [courts] must accord due deference to a Defendant’s efforts to restrain a detainee when faced with

a dynamic and potentially violent situation, otherwise, [courts] would give encouragement to insubordination in an environment which is already volatile enough.” *Scarbro v. New Hanover County*, 374 F. App’x 366, 370 (4th Cir. 2010) (internal citations omitted).

In analyzing the *Whitley* factors, the district court properly concluded that Plaintiff failed to satisfy the subjective component of an excessive-force claim because no reasonable jury could find that Officer Deas acted maliciously and for the purpose of causing harm. (JA156-160 (internal citations omitted)).

i. Officer Deas justifiably applied force to quell a reasonably perceived threat.

The district court properly reviewed the relevant NC DPS policies and procedures in which Officer Deas was trained to determine that he justifiably applied force to quell a reasonably perceived threat. Courts reviewing excessive force claims under the *Whitley* factors have previously reviewed these relevant NC DPS policies and procedures when holding that corrections officers reasonably applied hands-on force. *See Adkins v. Martin*, No. 1:17-cv-343-FDW, 2019 U.S. Dist. LEXIS 191452 (W.D.N.C. Nov. 4, 2019); *Geddings v. Roberts*, No. 1:15CV264, 2018 U.S. Dist. LEXIS 54312 (M.D.N.C. Mar. 30, 2018).

Under NC DPS Policies and Procedures, “[h]ands-on physical force . . . may be used: (1) to restrain or move a non-aggressive, non-compliant inmate”; (2) “to subdue an aggressive inmate when pepper spray is not effective or is not feasible,” or (3) . . . “to ensure compliance with a lawful order.” JA69. “Hands on physical force” is defined under NC DPS Policy and Procedures as “any degree of physical force exerted by a staff member using bodily strength including approved unarmed self-defense techniques.” JA66. Further, Maury Correctional Standard Operating Procedures provide that “[a]n Officer is authorized to use whatever degree of force that reasonably appears to be necessary to defend the Officer or a third party from imminent assault,” which includes ensuring “compliance with a lawful order.” JA84. These standard operating procedures define use of force as “[a]ny physical, mechanical or chemical element that is used to induce an inmate or inmates to comply with a lawful order, prevent an assault or escape, restore order, protect state property or otherwise to achieve a correctional objective.” JA83.

Here, Plaintiff admits that he (1) “refused to exit the holding cubicle when instructed to do so;” (2) “jerked away from Defendant;” (3) “pulled away again” from Defendant when he “attempted to gain better hold of

Plaintiff by taking control of the restrains,” and, (4) “attempted to head butt Defendant.” JA143-155 (referencing JA55). The surveillance video supports these admissions, and further, shows Officer Deas stepping away from Plaintiff and out of the holding cubicle before Plaintiff attempted his violent assault. Gray Unit Cam 47 0:11-0:15.

Under NC DPS Policy and Procedure, as well as Maury Correctional standard operating procedures, Officer Deas was authorized to use force against Plaintiff when he (1) faced threat of imminent assault; (2) needed to restore order; (3) needed to ensure compliance with a lawful order; and, (4) needed to subdue an aggressive inmate. “Prison administrators . . . should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security.” *Whitley*, 475 U.S. at 321-22 (citing *Bell v. Wolfish*, 441 U.S. 520, 547 (1979)). Accordingly, reviewing courts should grant deference to these policies that define the parameters of permissible force in situations where an inmate is noncompliant and poses an imminent threat to officers’ safety.

With his brief to this Court, Plaintiff contends that he posed absolutely no threat to Officer Deas. Br. at 18. Plaintiff relies heavily on this Court's decision in *Dean*, (Br. at 19); however, while *Dean* analyzed use-of-force following an inmate's headbutt, the specific facts are quite dissimilar. In *Dean*, the plaintiff was being escorted to his cell when he headbutted an officer, causing the plaintiff to fall to the ground. *Dean*, 984 F.3d at 299. Another officer subdued the plaintiff on the ground, with the officer's knee pressing into the plaintiff's chest. *Id.* Once the plaintiff was on the ground, restrained, and non-resistant, the officer administered "one long burst [of pepper spray] to [Dean's] face, lasting over 3 seconds" and "partially blind[ing] him." *Id.*

Unlike the claimant in *Dean*, Plaintiff here was non-compliant and assaultive, and was not restrained by other officers while being subject to physical abuse. Likewise, although Plaintiff contends he was "unable to assault anyone" because he was "shackled" and "cornered in a small holding cell, Br. at 19, the security video makes clear that Plaintiff attempted to forcefully headbutt Officer Deas despite the various restraint measures. The NC DPS Policies and Procedures, juxtaposed upon the record evidence, make clear that Officer Deas acted reasonably.

ii. The relationship between the need and the amount of force that was used.

The district court properly found that the force utilized by Officer Deas was not greater than necessary to achieve the penological purpose. JA157-158. Indeed, as previously noted, Plaintiff was not only non-compliant, but he attempted to assault Officer Deas. While the video illustrating the use of force does not entirely capture the scene, it sufficiently establishes that Officer Deas employed minimal hands-on force against Plaintiff during the 6-7 second encounter. Therefore, under NC DPS Policies and Procedures, hands-on force was authorized for this exact scenario. Accordingly, this Court should deny Plaintiff's solicitation to second-guess Officer Deas's decision to use hands-on force. *See Graham v. Connor*, 490 U.S. 386, 396-97 (1989) (explaining that "police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation" and that courts must consider such circumstances when determining whether a constitutional violation occurred); *Whitley*, 475 U.S. at 321 ("When the ever-present potential for violent confrontation and conflagration, . . . ripens into actual unrest and conflict, the admonition that a prison's

internal security is peculiarly a matter normally left to the discretion of prison administrators . . . carries a special weight.”); *Brooks*, 924 F.3d at 113 (“[A] manifest and immediate need for the protective use of force gives rise to a powerful logical inference that officers in fact used force for just that reason.”)).

iii. Plaintiff sustained no injury as a result of the hands-on force.

Plaintiff was medically screened following the use-of-force incident and was noted to have sustained no injury. JA144 (referencing JA55). While it is not a dispositive factor, the lack of injury weighs heavily in favor of a finding that force applied was not excessive. *See Wilkins*, 559 U.S. at 37 (“[T]he extent of injury suffered by the inmate is one factor that may suggest ‘whether the use of force could plausibly have been thought necessary’ in a particular situation.” (citations omitted)); *cf. Brooks*, 924 F.3d 104 (finding summary judgment improper where inmate sustained three taser shocks in the span of approximately one minute after the plaintiff refused to hold still for an identification photograph); *cf. Dean*, 984 F.3d 295 (finding summary judgment improper where inmate was sprayed with pepper spray at close range for over three seconds, and then sustained a contusion of the face, an

abrasion of the face, a fractured nasal bone, and subconjunctival hematoma requiring surgery following an alleged multi-officer assault). Accordingly, the district court properly held that this factor weighs in favor of Officer Deas.

iv. Officer Deas made multiple attempts to avoid, and then minimize, the force employed.

Plaintiff contends that the district court “improperly adopted Officer Deas’s version of events” when determining that the final *Whitley* factor favored Defendant. Br. at 23. Plaintiff contends that Officer Deas never ordered him to step down from the seat in the holding cubicle. JA143 (referencing JA55). In that sense, it is true that the parties possess divergent understandings of this issue. However, apart from this singular factual discrepancy—which the district court acknowledged and considered—the remaining facts are uncontested, including the events depicted in the security video.

For instance, Plaintiff does not contest that he “refused to exit the holding cubicle when instructed to do so.” JA144 (referencing JA55). Yet, Plaintiff nevertheless claims to this Court that “it is not clear from the video whether an officer gestured to Plaintiff to leave the cell.” Br. at 24.

Plaintiff's current suggestion is belied not only by his previous admission, it is wholly subverted by the video evidence.

The video also establishes that (1) another officer gestured for Plaintiff to leave the cell; (2) Officer Deas applied a soft touch to Plaintiff's right arm; (3) Plaintiff jerked away from the touch; (4) Officer Deas pulled Plaintiff down from standing atop the seat; (5) Plaintiff landed on his feet and again pulled away from Officer Deas; and, (6) that Officer Deas retreated from the cell, thereby creating space between them. Gray Unit Cam 47 at 0:04-0:14. As revealed by the video footage, it is *Plaintiff* who escalates the situation when he aggressively stepped toward Officer Deas and attempted to headbutt him. Gray Unit Cam 47 at 0:15.

Plaintiff attempts to deflect by focusing instead on whether Officer Deas gave him a verbal command to step down from standing on the seat in the holding cubicle. Br. at 24. Yet, while doing so, Plaintiff ignores the multiple attempts that were made to induce Plaintiff's compliance, including the gestures and commands of other correctional staff, the initial soft-touch approach taken by Office Deas, the attempt to hold Plaintiff by his restraints, and Officer Deas's retreat from the cubicle.

These multiple attempts to mitigate the response to Plaintiff's noncompliance substantiates the district court finding that the final *Whitley* factor favored Defendant.

Even in the light most favorable to Plaintiff, the record establishes that the trial court's analysis of this case under the parameters defined by *Whitley* was correct. Plaintiff failed to satisfy the subjective component of the excessive-force claim as no reasonable jury could find that Officer Deas acted maliciously.

II. THE DISTRICT COURT PROPERLY FOUND THAT OFFICER DEAS IS ENTITLED TO QUALIFIED IMMUNITY.

“Qualified immunity shields government officials from civil liability insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Trulock v. Freeh*, 275 F.3d 391, 399 (4th Cir. 2001), *cert. denied*, 537 U.S. 1045 (2002) (internal quotations omitted). The fundamental purpose of qualified immunity is to give “government officials breathing room to make reasonable but mistaken judgments” and protect “all but the plainly incompetent or those who knowingly violate the law” from the costs of suit. *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011) (internal quotation marks omitted).

A right is “clearly established” where the contours of that right are sufficiently clear so that a reasonable defendant would understand that what he is doing violates that right. *Wilson v. Layne*, 526 U.S. 603, 615 (1999). Thus, even if a plaintiff demonstrates a constitutional violation, an official is nonetheless entitled to qualified immunity if a reasonable person in the official’s position “could have failed to appreciate that his conduct would violate those rights.” *Meyers v. Baltimore County, Md.*, 713 F.3d 723, 731 (4th Cir. 2013) (citation and internal quotation marks omitted).

Officer Deas used hands-on physical force only in direct response to Plaintiff’s aggressive posturing and violent behavior. But for Plaintiff’s escalation of the situation, hands-on force would have been unnecessary. Nevertheless, Plaintiff’s behavior required a proportional response from correctional staff, and Officer Deas acted well within the bounds of his authority, obligation, and operating authorities. The clear and still un rebutted evidence could not permit a jury to find that a reasonable correctional officer should have known that his conduct would constitute excessive force. Despite the many efforts made by Officer Deas, Plaintiff refused to comply. Consequently, Officer Deas employed the minimal

amount of hands-on force to neutralize the situation and bring Plaintiff into compliance. Moreover, the limited exertion of force upon Plaintiff is reflected by the fact that he suffered no injury whatsoever. The district court properly held that the conduct of Defendant did not violate a clearly established constitutional right, and further, that Officer Deas is entitled to qualified immunity.

CONCLUSION

Defendant respectfully requests that this Court affirm the district court's judgment.

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Fed. R. App. P. 34(a)(3), oral argument should be denied because the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument. However, Appellee welcomes oral argument if the Court would find it helpful to clarify any issue presented in the appeal.

Respectfully submitted,

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April 10, 2023

CERTIFICATE OF SERVICE

I certify that on this 11th day of April, 2023, I filed the foregoing brief with the Clerk of Court using the CM/ECF system, which will automatically serve electronic copies on all counsel of record.

/s/ Lisa M. Taylor
Lisa M. Taylor

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because it contains 4,938 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). This brief complies with the typeface and type-style requirements of Fed. R. App. P. 32(a)(5) & (6) because it has been prepared in a 14-point, proportionally spaced typeface.

/s/ Lisa M. Taylor
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