[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-11249
Non-Argument Calendar

D.C. Docket No. 4:18-cv-00395-WS-CAS

MORRIS LEE MOORE,

Plaintiff-Appellant,

versus

E HUNTER,
Sergeant,
HARTBARGER,
Officer,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Florida

(March 2, 2021)

Before WILSON, JILL PRYOR, and LUCK, Circuit Judges.

PER CURIAM:

Morris Lee Moore, a Florida prisoner proceeding pro se, appeals the district court's grant of summary judgment in favor of defendants Sergeant Erica Hunter and Officer Michael Hartbarger (collectively, Officers) on his claims of deliberate indifference to his serious medical needs and excessive use of force.

On October 25, 2017, while Moore was incarcerated at Taylor Correctional Institute, correction officers found stimulants in his cell. As a punishment, Moore was placed in a "strip cell"—an empty cell with only a bed.[1] The next day Moore contends that he declared a mental health emergency several times and that Hartbarger denied his requests for mental health care. Then, Moore took a small piece of metal sticking out of his bed and began cutting his left arm "in hopes of bleeding out." Hartbarger saw that Moore was bleeding but continued to refuse Moore medical treatment, telling Moore that he would "be alright" and "we need to see more blood."

Subsequently, Hunter approached Moore's cell and witnessed him cutting his arm and bleeding. She asked Moore what he was doing, and he told her he needed to speak with someone in mental health. Hunter then sprayed Moore in the face, eyes, and mouth with chemical agents. Hunter escorted Moore to the decontamination shower and prison medical professionals treated Moore's arm

[1] Inmates placed on suicide watch are often housed in strip cells. Generally, strip cells are empty cells that only contain a steel bed, and inmates placed in these cells are stripped down to their underwear.

with a bandage. Then, prison mental health personnel spoke with Moore and placed him on suicide watch.

Moore filed a complaint under 42 U.S.C. § 1983, claiming that the Officers violated his Eighth and Fourteenth Amendment rights because they were deliberately indifferent to his medical needs and used excessive force when they sprayed him with chemical agents. The Officers moved for summary judgment. A magistrate judge issued a Report and Recommendation, recommending the court deny the Officers' motion. The district court rejected the Report and Recommendation and granted the Officers summary judgment, finding that there were no issues of material fact. Moore appealed.

First, Moore argues the district court erred in granting summary judgment to the Officers on his deliberate indifference claim because, accepting his version of the facts as true, a jury could find that Hartbarger was deliberately indifferent to his serious medical need when Hartbarger denied his repeated requests for mental health assistance and refused to seek medical help after he saw Moore bleeding. Second, he argues that the court erred in granting summary judgment as to his excessive force claim because Hunter's use of force was unnecessary and without penological justification, and she exceeded the appropriate use of force under the circumstances. We address each claim in turn.

I.

We review the district court's grant of summary judgment de novo, applying the same legal standards as applied by the district court. *Gish v. Thomas*, 516 F.3d 952, 954 (11th Cir. 2008). Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). A factual dispute exists where a reasonable factfinder could find by a preponderance of the evidence that the nonmoving party is entitled to a verdict. *Kernel Recs. Oy v. Mosley*, 694 F.3d 1294, 1300 (11th Cir. 2012). Unsupported factual allegations, affidavits based on information and belief instead of personal knowledge, and mere conclusions are insufficient to withstand a motion for summary judgment. *Ellis v. England*, 432 F.3d 1321, 1327 (11th Cir. 2005) (per curiam). A non-conclusory affidavit that complies with Federal Rule of Civil Procedure 56 can create a genuine dispute concerning an issue of material fact, even if it is self-serving and/or uncorroborated. *United States v. Stein*, 881 F.3d 853, 858–59 (11th Cir. 2018) (en banc).

We view all evidence and factual inferences in the light most favorable to the nonmoving party. *Kernel Recs. Oy*, 694 F.3d at 1301. It is inappropriate for the district court to make credibility determinations or to weigh the evidence at the summary judgment stage. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000). However, where the nonmovant relies upon implausible

inferences drawn from that evidence, summary judgment is appropriate. *Cuesta v. Sch. Bd. of Miami-Dade Cnty.*, 285 F.3d 962, 970 (11th Cir. 2002).

II.

The Eighth Amendment imposes duties on prison officials to ensure that inmates receive adequate medical care. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). Deliberate indifference to a prisoner's serious medical needs violates the Eighth Amendment. *Hoffer v. Sec'y, Fla. Dep't of Corr.*, 973 F.3d 1263, 1270 (11th Cir. 2020). Prisoners have an Eighth Amendment right "to receive medical treatment for illness and injuries, which encompasses a right to psychiatric and mental health care, and a right to be protected from self-inflicted injuries, including suicide." *Gish*, 516 F.3d at 954.

A prisoner seeking to show that a prison official acted with deliberate indifference to his serious medical need "must satisfy both an objective and subjective inquiry." *Hoffer*, 973 F.3d at 1270. Under the objective prong, a prisoner must allege a condition that is sufficiently serious to violate the Eighth Amendment. *Id.* A serious medical need is "one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Id.* In either situation, there must be a substantial risk of serious harm if the condition is not treated. *Id.* Under the subjective prong, a prisoner must allege that the defendant

acted with deliberate indifference to a serious medical need. *Id.* To establish deliberate indifference, the plaintiff must demonstrate that the defendant: "(1) had subjective knowledge of a risk of serious harm; (2) disregarded that risk; and (3) acted with more than gross negligence." *Id.*

A prison official may also be held liable for failing to prevent harm to a prisoner if he acted with deliberate indifference toward that prisoner's health and safety. *Gish*, 516 F.3d at 954. This standard requires that the prison official deliberately disregarded "a strong likelihood rather than a mere possibility that the self-infliction of harm will occur." *Id.* We have stated that "failure to prevent suicide has never been held to constitute deliberate indifference" where a prison official has no knowledge of an inmate's suicidal tendencies. *Jackson v. West*, 787 F.3d 1345, 1353 (11th Cir. 2015). To this end, "[o]rdinary malpractice or simple negligence won't do; instead, the plaintiff must show subjective recklessness as used in the criminal law." *Swain v. Junior*, 961 F.3d 1276, 1285–86 (11th Cir. 2020) (internal quotation marks omitted).

Here, the district court correctly granted summary judgment on Moore's deliberate indifference claims because he did not produce evidence supporting the reasonable inference that the Officers had subjective knowledge that he needed mental health treatment or had suicidal tendencies, or deliberately delayed or denied him access to that treatment. At best, Hartbarger acted negligently. There

is no evidence in the record to demonstrate that Harbarger knew Moore had suicidal tendencies, saw that Moore cut himself, or that there was a strong likelihood that Moore would harm himself. Also, the fact that Moore was placed in a strip cell makes it more unlikely that Hartbarger would have known there was a strong likelihood Moore was at a serious risk of harm. And while Hartbarger's alleged continued denial of mental health treatment and statement that he "need[ed] to see more blood" in order to provide Moore with treatment are troubling allegations, absent additional record evidence, those actions do not compel a finding that he was subjectively aware of Moore's suicidal tendencies or medical needs. In fact, it demonstrates that Hartbarger thought Moore's injury was minor. Accordingly, the district court did not err in granting summary judgment in favor of the Officers on Moore's deliberate indifference claims.

III.

The Eighth Amendment "prohibits the unnecessary and wanton infliction of pain." *Thomas v. Bryant*, 614 F.3d 1288, 1303 (11th Cir. 2010) (internal quotation mark omitted). In determining whether prison officials are entitled to summary judgment in the context of an excessive force claim, courts must determine whether the evidence goes beyond the mere reasonableness of a given use of force. *Campbell v. Sikes*, 169 F.3d 1353, 1375 (11th Cir. 1999). Instead, courts must determine whether the evidence, when viewed in the light most favorable to the

nonmoving party, supports a reasonable inference that the prison official acted wantonly in inflicting the pain. *Id.*

In the prison context, an excessive force claim "requires a two-prong showing: an objective showing of a deprivation or injury that is sufficiently serious to constitute a denial of the minimal civilized measure of life's necessities and a subjective showing that the official had a sufficiently culpable state of mind." *Thomas*, 614 F.3d at 1304 (internal quotation marks omitted). Both inquiries are contextual, and the objective harm inquiry is responsive to contemporary standards of decency. *Id.* While not every "malevolent touch" by a prison guard amounts to excessive force, a de minimis use of force is cognizable under the Eighth Amendment if it is "repugnant to the conscience of mankind." *See Wilkins v. Gaddy*, 559 U.S. 34, 37–38 (2010) (per curiam).

For the subjective intent prong, a plaintiff must show that the defendant applied force maliciously and sadistically for the purpose of causing harm. *Id.* "Under the Eighth Amendment, force is deemed legitimate in a custodial setting as long as it is applied in a good faith effort to maintain or restore discipline and not maliciously and sadistically to cause harm." *Skrtich v. Thornton*, 280 F.3d 1295, 1300 (11th Cir. 2002) (internal quotation marks omitted and alterations adopted). In determining whether force was applied maliciously or sadistically, we consider several factors, including (1) the need to apply force, (2) the relationship between

that need and the amount of force applied, (3) the threat reasonably perceived by the responsible officials, and (4) any efforts made to temper the severity of the forceful response. *Id.* Where prison officials maliciously and sadistically apply force to cause harm, they always violate contemporary standards of decency, even in the absence of significant injury. *Wilkins*, 559 U.S. at 37. To this end, the absence of injury is only one factor to be considered in determining whether the force applied was plausibly thought necessary. *Id.* The absence of injury is also some indication of the amount of force applied. *Id.* Once the need for force ceases, any continued application of harmful force can constitute an Eighth Amendment violation. *Williams v. Burton*, 943 F.2d 1572, 1576 (11th Cir. 1991) (per curiam).

Here, the district court did not err in granting summary judgment in favor of the Officers with respect to Moore's excessive force claim because Hunter engaged in a minimal application of force that resulted in no discernible injury, and the evidence did not show that Hunter sprayed Moore maliciously and sadistically.

Even assuming Hunter's use of force constituted a "malevolent touch," the evidence shows that the force applied was de minimis. *Wilkins*, 559 U.S. at 37. The use of force was limited to the spraying of the chemicals. It is not "repugnant to the conscience of mankind" that an officer like Hunter might use chemical spray

against an inmate in order to prevent his attempted suicide, even if a more restrained response might have been preferable. *Id.* at 37–38.

The undisputed facts do not raise an inference that Hunter acted wantonly in spraying Moore with chemical agents. Hunter says that she saw Moore cutting himself and that Moore said he was trying to kill himself. Moore said that he told Hunter he needed mental health care. Both parties agree that after Hunter sprayed Moore, he was immediately taken to the decontamination shower and then seen by the prison medical staff. These facts do not demonstrate that Hunter acted maliciously or sadistically—rather, they support a reasonable inference that Hunter sprayed the chemicals in order to prevent Moore from further injuring himself. *Williams*, 943 F.2d at 1576; *Swain*, 961 F.3d at 1286. Accordingly, we affirm the district court's dismissal at summary judgment of Moore's claim of excessive force.

AFFIRMED.