

FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-12549

JONATHAN MICHAEL BURTON,

Plaintiff-Appellant,

versus

DR. G. ESPINO,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:21-cv-00597-WWB-MCR

Before NEWSOM and LUCK, Circuit Judges, and LEIBOWITZ,* District Judge.

NEWSOM, Circuit Judge:

* Honorable David S. Leibowitz, United States District Judge for the Southern District of Florida, sitting by designation.

Florida inmate Jonathan Burton alleges that he was severely beaten by several prison guards charged with his custody. Then, Burton says, literally adding insult to injury, when he sought treatment for his wounds, a prison doctor repeatedly blew him off. Burton sued the doctor, alleging both deliberate indifference to his medical needs, in violation of the Eighth Amendment, and retaliation, in violation of the First Amendment. The district court granted summary judgment to the doctor and dismissed Burton's claims. Because we conclude that a genuine dispute of material fact exists as to each claim, we reverse and remand for further proceedings.

I

A

Because the district court granted summary judgment against him, we must consider the evidence in the "light most favorable to" Burton and grant him all reasonable inferences. *Stalley v. Cumbie*, 124 F.4th 1273, 1283 (11th Cir. 2024). And in so doing, we must treat his verified complaint as "the equivalent of an affidavit for purposes of summary judgment." *Sears v. Roberts*, 922 F.3d 1199, 1206 (11th Cir. 2019) (citing *Barker v. Norman*, 651 F.2d 1107, 1115 (5th Cir. Unit A 1981)).

With that preface, the record before us, properly construed, reveals the following: Burton, an inmate in the custody of the Florida Department of Corrections, alleges that on April 21, 2020, prison guards twice beat and severely injured him. The first assault

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occurred while two officers were escorting him back to his cell following a mental-health consult. Burton asserts that one of the officers used a radio to “bust open” his head and that the other “snapp[ed]” his left ring finger while punching and kicking him. Second Am. Compl. at 13, Dkt. No. 22. According to Burton, he reported to the medical ward immediately following the incident, and the staff there closed his head wound. While returning from that appointment, Burton says, he told the four guards escorting him that his head hurt, that he suffered from epilepsy, and that he was experiencing “unbearable pain” in his knee, hand, and ribs. He declared a “medical emergency” and refused to enter his cell. In response, Burton contends, the officers began beating him. Burton alleges that as a result of this second beating, his headwound reopened, he began “bleeding badly,” and he sustained new injuries. He was taken back to the medical ward, but the nurse “refused to see” his new injuries. According to Burton, after he was returned to his cell and the guards left, he suffered two seizures.

On April 23, Burton was evaluated for the first time by Dr. Gonzalo Espino in connection with the injuries suffered during the assaults two days before. Burton maintains that as soon as he entered the exam room, Dr. Espino stated, “I got your grievances!”¹ before yelling, “[H]e’s done!”—a demand (albeit an unsuccessful one) that officers remove him from the office. *Id.* at 14. Burton then pleaded with Dr. Espino to examine his head wound, told him

¹ Although it’s not clear from the record, it appears that Burton must have filed grievances against Dr. Espino prior to this meeting.

about his two seizures, and explained that he was experiencing pain and swelling in his fingers, ribs, and knee. *Id.* Dr. Espino replied, “Think about that next time you write a grievance[.] Get him out of here!” *Id.* According to Burton, he was with Dr. Espino for no more than 60 seconds before he was escorted out. *Id.* Burton later learned that Dr. Espino had ordered x-rays for his chest, left hand, left knee, and left-side ribs. *Id.* Burton got the scans a few days later; they showed that his left hand, knee, chest, and ribs appeared normal with no fractures or dislocation.²

Burton alleges that his head and hand injuries worsened significantly over the course of the next few months. He says that he repeatedly filed sick-call requests and grievances seeking medical care and that in response a second doctor ordered another set of x-rays for both hands. Those scans, conducted in July 2020, showed a “new ring finger [proximal interphalangeal (PIP)] joint flexion deformity” on his left hand and noted “flexion of the index and long finger PIP joints” on his right hand. Emergency Room R. at 6, Dkt. No. 22-1 (citation modified). In plain English, that means that the x-rays showed, at the very least, a deformity caused by a fracture that prevented Burton from extending his left ring finger. (The

² Dr. Espino cites his consultation notes as counter-evidence of what transpired during the April 2020 consultation. As Dr. Espino tells it, he conducted a visual examination and concluded that Burton was “conscious,” “coherent,” “alert,” “ambulatory,” and had “no [neuro] deficits.” The notes also confirm that Dr. Espino ordered “appropriate x[-]rays,” presumably to further evaluate Burton’s injuries. It’s unclear whether the notes were taken during or after the consultation. We must, of course, take the facts in the light most favorable to Burton, as the summary judgment nonmovant.

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scans’ import for the fingers on Burton’s right hand, frankly, is less obvious—whether the referenced “flexion” there referred to a deformity (as on the left side) or normal use. For reasons that will become clear, the ambiguity doesn’t much matter.)

Soon after Burton was diagnosed with “deformity/PIP joint flexion,” a third doctor provisionally diagnosed him with “Boutonnière[] deformity” of both “the right index and left ring fingers and referred [him] for an orthopedic consult” at a state medical facility called the Reception and Medical Center (“RMC”). Summ. J. Order at 5, Dkt. No. 114. An orthopedic specialist there concluded that Burton had a “contracture of the PIP joints in his left ring and right index fingers,” and recommended that Burton get physical therapy to regain range of motion in both hands. *Id.* at 13. Several days later, Dr. Espino signed off on the orthopedist’s report.

On November 3, 2020, Burton visited Dr. Espino seeking physical therapy (“PT”). Despite the orthopedic specialist’s recommendation, Dr. Espino refused. According to Burton, Dr. Espino repeated his earlier refrain: “I told you about writing those grievances on me[,] get out of my office.” Second Am. Compl. at 15. At the same meeting, Dr. Espino noted Burton’s continued seizure medication prescription and ordered tests to monitor his medication levels.

B

Burton brought suit under 42 U.S.C. § 1983, raising three claims. In particular, he alleged that Dr. Espino (1) was deliberately

indifferent to his head injury, in violation of the Eighth Amendment, (2) was deliberately indifferent to his hand injuries, also in violation of the Eighth Amendment, and (3) refused to provide him medical care in retaliation for his grievances, in violation of the First Amendment. Burton requested declaratory relief and compensatory and punitive damages. Dr. Espino moved for summary judgment on all three claims.

The district court granted summary judgment to Dr. Espino, holding that (1) he “did not act deliberately indifferent to [Burton’s] epilepsy or head wound,” (2) he did not act with “subjective recklessness in his treatment of [Burton’s] hand and finger injuries,” and (3) “the evidence d[id] not show [Dr.] Espino denied [Burton] medical care in retaliation for filing grievances.” Summ. J. Order at 23–25.

This is Burton’s appeal. Our sole charge is to determine whether there exists a “genuine issue as to any material fact” with respect to the merits of any of Burton’s claims. *Stalley*, 124 F.4th at 1282.³

II

We begin with Burton’s deliberate-indifference claims—one related to his head injury and one to his hands.

³ Dr. Espino hasn’t raised a qualified-immunity defense, either in the district court or on appeal.

The Supreme Court has interpreted the Eighth Amendment's bar on the "inflict[ion]" of "cruel and unusual punishments," U.S. Const. amend. VIII, to entail a corollary prohibition on prison officials exhibiting "deliberate indifference" to the medical needs of inmates. *See, e.g., Farmer v. Brennan*, 511 U.S. 825, 832–34 (1994). To make out a deliberate-indifference claim, an inmate must meet "two requirements." *Id.* at 834. "First, the deprivation alleged must be, objectively, sufficiently serious." *Id.* (citation modified). So here, Burton must show that he had a "serious medical need"—one that was either "diagnosed by a physician as mandating treatment" or "so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Farrow v. West*, 320 F.3d 1235, 1243 (11th Cir. 2003). The need must be "one that, if left unattended, poses a substantial risk of serious harm." *Id.* (citation modified).

Second, Burton must show that Dr. Espino "acted with an attitude of 'deliberate indifference' to [his] serious medical need." *Stalley*, 124 F.4th at 1283 (quoting *Farrow*, 320 F.3d at 1243). To do so, he must demonstrate that Dr. Espino (1) had "subjective knowledge of a risk of serious harm," (2) "disregarded that risk," and (3) "engaged in conduct that amounts to subjective recklessness" as that term is used in the criminal law. *Id.*; accord *Wade v. McDade*, 106 F.4th 1251, 1255 (11th Cir. 2024) (en banc). To demonstrate the required criminal recklessness, Burton must show that Dr. Espino "actually knew" that "his own acts or omissions" would "put [Burton] at substantial risk of serious harm." *Wade*, 106 F.4th at 1253.

For the reasons that follow, we hold that genuine disputes of material fact exist with respect to both deliberate-indifference claims and, accordingly, that the district court erred in granting summary judgment to Dr. Espino.

A

First, Burton’s head injury. Burton complains that Dr. Espino acted with deliberate indifference when, on April 23, he refused to treat the head injuries that Burton had suffered two days earlier. As Burton tells it, Dr. Espino was the very portrait of indifference during that episode: Burton alleges that Dr. Espino greeted him with a taunt—“I got your grievances!”—and an instruction to nearby officers to remove him: “[H]e’s done.” Second Am. Compl. at 14. In response, Burton says he pleaded for care, telling Dr. Espino that he had experienced two seizures and was in pain. *Id.* But, Burton continues, Dr. Espino dismissed him: “Think about that next time you write a grievance[.] Get him out of here!” *Id.* The entire interaction, Burton claims, lasted no more than 60 seconds. *Id.* Dr. Espino ordered x-rays for Burton’s hand injury, but did nothing to evaluate his head.⁴

⁴ To be sure, Dr. Espino tells the story differently: Pointing to his own “consultation notes” of the April 23 meeting, Dr. Espino says that Burton complained not of seizures and severe pain but only of “minor injuries from previous staff ‘use of force’” and “alleged staff abuse.” Dr. Espino further recounts that his notes reflected no meaningful neurological deficits and reported that Burton was coherent, alert, and ambulatory. The problem, of course, as already explained, is that given the procedural posture of the case, we must take the facts and indulge all reasonable inferences in Burton’s favor—including

How, then, do the facts as alleged by Burton map onto the two-part deliberate-indifference standard? Helpfully, there's no serious dispute about the first prong—all seem to agree that Burton's epilepsy and trauma-related seizures qualify as objectively serious medical needs. *See Farmer*, 511 U.S. at 834.

The parties vigorously disagree, though, about the second prong—whether Dr. Espino “acted with an attitude of ‘deliberate indifference’ to [Burton’s] serious medical need[s].” *Stalley*, 124 F.4th at 1283. We hold that, taken in the light most favorable to Burton, the record evidence—and in particular, the allegations contained in his verified complaint—give rise to a genuine dispute of material fact that precludes summary judgment for Dr. Espino on the head-related deliberate-indifference claim.

The first sub-factor (so to speak) of the second deliberate-indifference prong asks whether the defendant had “subjective knowledge of a risk of serious harm.” *Stalley*, 124 F.4th at 1283. Dr. Espino knew about Burton's epilepsy diagnosis, as he had previously “sign[ed] off on [Burton’s] treatment.” Second Am. Compl. at 16. And, of course, Burton alleges that he told Dr. Espino at the April 23 meeting that he was “in pain,” that he asked Dr. Espino to “look at [his] head,” and that he told Dr. Espino that he had suffered “two seizures.” *Id.* at 14. The record before us reveals at the very least a genuine dispute of material fact as to whether Dr. Espino

those alleged in his verified complaint. *See Stalley*, 124 F.4th at 1283; *Sears*, 922 F.3d at 1206.

had the requisite subjective knowledge.

The second sub-factor asks whether the defendant “disregarded” the risk. *Stalley*, 124 F.4th at 1283; *see also McElligott v. Foley*, 182 F.3d 1248, 1255 (11th Cir. 1999) (“When the need for treatment is obvious, medical care which is so cursory as to amount to no treatment at all may amount to deliberate indifference.”) (citation modified). Burton alleges that in response to his pleas for help, Dr. Espino said, “I got your grievances,” “he’s done,” “[t]hink about that next time you write a grievance,” and “[g]et him out of here!” Second Am. Compl. at 14. Setting aside the potentially retaliatory nature of those statements—more on that below—they reflect a callous dismissiveness toward Burton’s complaints. So there is, at a minimum, a genuine dispute about whether Dr. Espino disregarded the risk that Burton faced.

Finally, under the third sub-factor, we ask whether Dr. Espino “engaged in conduct that amounts to subjective recklessness” as used in the criminal law—that is, whether he actually “knew that his conduct . . . put [Burton] at substantial risk of serious harm.” *Stalley*, 124 F.4th at 1283. We have little trouble concluding that there is at least a genuine factual dispute about whether he did. On Burton’s account, he expressly told Dr. Espino about his head injuries, his pain, and his ensuing seizures, and Dr. Espino responded dismissively—even derisively—without offering any assessment or treatment. Given the seriousness of the conditions of which Burton says he complained, Dr. Espino couldn’t *not* have known that his response—essentially, waving his hand—created a serious risk

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of harm.⁵

B

Next up, Burton's hand injuries. Again, here are the relevant facts taken in the light most favorable to Burton: At the same April 23 meeting, Dr. Espino ordered x-rays of Burton's "left hand, chest, ribs, and knee." Summ. J. Order at 21. Over the course of the next few months, Burton continued to complain of pain in his fingers, and a second doctor ordered additional x-rays. Those scans, conducted in July, showed, at a minimum, "PIP joint flexion deformity" in his left ring finger. At a later appointment, a third doctor provisionally diagnosed Burton with "Boutonnière[] deformity of the right index and left ring fingers and referred [him] for an orthopedic consult." Summ. J. Order at 13. A few weeks after that, Burton underwent an orthopedic exam at RMC where an orthopedist examined him and diagnosed him with "a contracture of the PIP joints in his left ring and right index fingers." *Id.* That physician recommended PT and, three days later, Dr. Espino signed off on the report. Even so, at a November consult Dr. Espino refused to refer Burton for PT and cavalierly dismissed him as he had before: "I told you about writing those grievances on me[,] get out of my

⁵ There is one additional point worth clarifying: In rejecting Burton's claim, the district court emphasized the absence of evidence that Dr. Espino's conduct led to an "increase in seizures or any other harm related to his head wound or epilepsy." Summ. J. Order at 24. But that sort of evidence isn't required. All Burton needs to show is that Dr. Espino exposed him to a substantial risk of serious harm. For reasons explained in text, there is at least a genuine dispute of material fact that Dr. Espino did just that.

office.” Second Am. Compl. at 15 (citation modified).

Marching through the same deliberate-indifference analysis, we come to the same conclusion: The record here at the very least reveals a genuine dispute of fact bearing on each of the elements of Burton’s claim. First, the record is replete with evidence that Burton suffered from continuing pain in his fingers and that he was eventually diagnosed with a joint deformity. Taking the facts in the light most favorable to Burton, his “unattended” injury left him in “serious” pain, requiring multiple x-rays and consultations and prompting an orthopedic specialist to recommend PT. Given that a physician recommended PT to treat Burton’s hand injuries, he has satisfied the “serious medical need” element. *Farrow*, 320 F.3d at 1243.

Second, there is at least a genuine dispute of material fact about whether Dr. Espino “acted with an attitude of ‘deliberate indifference’ to [Burton’s] serious medical need” when, despite the orthopedist’s recommendation, he refused to order PT for Burton’s hand injuries. *Stalley*, 124 F.4th at 1283. Again, we ask whether Dr. Espino “(1) had subjective knowledge of a risk of serious harm, (2) disregarded that risk, and (3) engaged in conduct that amounts to subjective recklessness.” *Id.*

The first two prongs are easily satisfied, at least sufficiently to preclude summary judgment: Dr. Espino knew about Burton’s hand injuries in April, when he ordered x-rays; he signed the report from the orthopedic specialist recommending that Burton get PT for his hand injuries; and yet he ultimately refused Burton PT. The

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record, then, at the very least suggests that Dr. Espino subjectively knew that without PT Burton faced a risk of continued pain and the inability to use his hands, but that Dr. Espino disregarded that risk.

So, all that remains is whether Dr. Espino “engaged in conduct that amounts to subjective recklessness” as used in the criminal law. *Id.*; *see also Wade*, 106 F.4th at 1262. As was the case with his dismissive response to Burton’s complaints about his head injuries, Dr. Espino’s act of waving off Burton’s (and the orthopedist’s) PT recommendation—in particular, by pointing to Burton’s grievances—evidences the necessary mens rea. Whether or not Dr. Espino’s refusal on account of Burton’s grievance activity constitutes First Amendment retaliation—we’ll explain shortly why it does—his statement shows that he refused Burton prescribed treatment for “non-medical reasons.” *Farrow*, 320 F.3d at 1246. Accordingly, there is at the very least a genuine dispute of fact about whether Dr. Espino exhibited deliberate indifference toward Burton when he dismissively denied Burton’s request for PT.

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For these reasons, we hold that the record—including, perhaps most notably, Burton’s verified complaint—reflects a genuine dispute of material fact with respect to both deliberate-indifference claims. The district court erred in granting summary judgment to Dr. Espino on them.

III

Finally, Burton’s First Amendment claim. Burton contends

that Dr. Espino unlawfully retaliated against him for engaging in constitutionally protected speech. In particular, Burton says, Dr. Espino denied him medical care because of grievances he had filed in the past. Crediting Burton’s narrative, as we must, we conclude that a jury could reasonably conclude that Dr. Espino refused him medical care on account of his grievances. In fact, according to Burton, Dr. Espino said so himself—not just once but twice, first in April and then again in November.

To make out a First Amendment retaliation claim, a plaintiff must show that “(1) his speech was constitutionally protected[,], (2) [he] suffered adverse action such that [the defendant]’s allegedly retaliatory conduct would likely deter a person of ordinary firmness from engaging in such speech[,], and (3) there is a causal relationship between the retaliatory action and the protected speech.” *Smith v. Mosley*, 532 F.3d 1270, 1276 (11th Cir. 2008).

The first element is easily satisfied here. It is well established that inmate grievances qualify for First Amendment protection. *See, e.g., id.* (observing that “grievances constituted protected speech”); *see also Christmas v. Nabors*, 76 F.4th 1320, 1334 (11th Cir. 2023). No need to reinvent that wheel.

With respect to the second prong, we hold that there is, at a minimum, a genuine dispute of fact as to whether Burton suffered the kind of adverse action that would chill the speech of a “person of ordinary firmness.” *Smith*, 532 F.3d at 1276. With good reason, Dr. Espino doesn’t seriously deny that refusing an inmate needed medical treatment as a means of punishing him for having filed

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prison grievances is the sort of conduct that would objectively chill speech. Instead, Dr. Espino argues (1) that he didn't withhold any medical care from Burton and (2) that Burton's speech couldn't have been chilled because he continued to file grievances even after the April incident.

The first argument runs headlong into the summary judgment standard, according to which we must take the facts in the light most favorable to Burton, and under which we must therefore assume that Dr. Espino *did* refuse Burton treatment on account of his grievances. And the second is just wrong as a matter of law. The “person of ordinary firmness” standard is objective, not subjective. *See Bennett v. Hendrix*, 423 F.3d 1247, 1254 (11th Cir. 2005) (“[W]e [do] not focus on the plaintiff's subjective, actual chilling.”). Because Dr. Espino's mistake is a common one, we'll *re-reiterate* here what we reiterated recently:

Our precedent doesn't require a First Amendment plaintiff to allege that the government's retaliatory action *in fact* deterred [*him*] from engaging in protected activity. Rather, the question is whether the allegedly “adverse conduct . . . would *likely* deter a *person of ordinary firmness* from engaging” in such activity.

African People's Educ. and Def. Fund v. Pinellas Cnty., No. 24-13547, ___ F.4th ___, 2026 WL 2178963, at *7 (July 29, 2026) (quoting *Brannon v. Finkelstein*, 754 F.3d 1269, 1274 (11th Cir. 2014)). “Accordingly,” we clarified there, “the mere fact (even if true) that” a plaintiff has persisted in expressive activity “even after” the allegedly retaliatory conduct “is not dispositive.” *Id.* “The question isn't what [the

plaintiff before the court] has done, but rather what a [plaintiff] of ordinary firmness in its circumstances would do.” *Id.*

We think it clear that an inmate of ordinary firmness—rather, perhaps, than one blessed with Burton’s particular resilience—would be deterred from filing future grievances against his doctor in order to ensure that he can get needed medical care.

The third and final retaliation element is similarly straightforward. The statements that Burton attributes to Dr. Espino at the April and November meetings—which for present purpose we must assume occurred just as Burton says—are more than sufficient to show a “causal relationship,” *Smith*, 532 F.3d at 1276, between the grievances and the denial of care. Again, according to Burton’s verified complaint, Dr. Espino said as much. When Burton walked in for his April appointment, Dr. Espino said, in so many words, “I got your grievances!” and then motioned to nearby officers to escort Burton out, saying “he’s done.” Second Am. Compl. at 14. When Burton complained of his injuries and “pleaded” for help, Dr. Espino again responded: “Think about that next time you write a grievance[.] Get him out of here!” *Id.* And finally, when Burton presented an orthopedist’s recommendation for PT, Dr. Espino rejoined, “I told you about writing those grievances on me[,.] get out of my office.” *Id.* at 15 (citation modified). On Burton’s telling, Dr. Espino all but confessed his motivations: He rejected Burton’s pleas for help because Burton had filed grievances against him—which the First Amendment unquestionably protected Burton’s right to do.

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For these reasons, we hold that there is a genuine dispute of fact as to whether Dr. Espino withheld medical care to retaliate against Burton for engaging in constitutionally protected conduct. The district court erred in granting summary judgment to Dr. Espino on Burton's First Amendment claim.

IV

At the summary judgment stage, we must take the facts in the light most favorable to the nonmoving party and ask whether a genuine dispute exists, such that the case should be resolved by a jury. The facts contained in Burton's verified complaint create such a dispute. The district court erred in granting summary judgment to Dr. Espino. Accordingly, we reverse the district court's decision and remand the case for further proceedings consistent with this opinion.

REVERSED and REMANDED.