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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
Urbana Division

REGAN WHITESIDE,

Plaintiff,

v.

COUNTY OF KANKAKEE, et al.,

Defendants.

Case No. 16-2115

ORDER

This case is before the Court on Defendants Thomas Dundas and Tami Stauffer's Motion for Summary Judgment (#48). Pro se Plaintiff Regan Whiteside did not file a response. Pursuant to Illinois Central District Local Rule 7.1(D)(2), Plaintiff's failure to respond is deemed an admission of the motion. For the reasons discussed below, Defendants' Motion for Summary Judgment (#48) is **GRANTED**.

I. Introduction

Plaintiff's Complaint raises claims under 42 U.S.C. § 1983. The Complaint alleges that Correctional Officer Thomas Dundas failed to protect Plaintiff from an altercation with another inmate. Plaintiff further alleges that Nurse Tami Stauffer was deliberately indifferent to Plaintiff's serious medical need by failing to provide adequate medical care after the altercation.[1]

II. Standard of Review

Summary judgment is only appropriate if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a

[1] Plaintiff's Complaint named several other Defendants including the County of Kankakee, Sheriff Timothy Bukowski, Chief of Corrections Chad Kolitwenzew, Officer Lesage, Classification Officer Kate Crumweied, Physician's Assistant Brent Huffines, Nurse Angie Kemps, Dr. Jeff Long, and Officer McCabe. Each of these Defendants, except Angie Kemps, was dismissed by the Court's Merit Review Order. (Merit Review Order, #12, July 20, 2016.) Additionally, Plaintiff moved to voluntarily dismiss Kemps on October 31, 2016. The Court terminated Kemps from this case on November 1, 2016. Therefore, only Dundas and Stauffer remain Defendants in this case.

matter of law." FED. R. CIV. P. 56(a). 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). Thus, the substantive law applicable to a case "will identify which facts are material." *Id.* A dispute as to a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.*; *accord Carroll v. Lynch*, 698 F.3d 561, 564 (7th Cir. 2012). The moving party bears the initial burden to "put[] forth evidence showing the absence of a genuine dispute of material fact." *Carroll*, 698 F.3d at 564. Once the moving party does so, "the burden shifts to the non-moving party to provide evidence of specific facts creating a genuine dispute." *Id.* In determining whether a genuine issue of material fact exists, the Court views all facts and draws all reasonable inferences in favor of the nonmoving party. *Jajeh v. Cnty. of Cook*, 678 F.3d 560, 566 (7th Cir. 2012). To establish a "genuine" factual dispute, however, the non-moving party must "do more than simply show there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Mere speculation or conjecture will not suffice. *See Borcky v. Maytag Corp.*, 248 F.3d 691, 695 (7th Cir. 2001) (collecting cases).

III. Material Facts

Defendants' Motion for Summary Judgment includes several pages of numbered undisputed material facts. Local Rule 7.1(D)(2)(6) provides that a failure to respond to any numbered fact is deemed an admission of that fact. The Seventh Circuit has further held that local rules governing summary judgment statements of material facts are to be strictly applied, and any facts not contradicted as specified by the local rule are deemed admitted. *See Valenti v. Qualex, Inc.*, 970 F.2d 363, 368-69 (7th Cir. 1992). Therefore, the Court deems Plaintiff's failure to file a response an admission of each undisputed fact alleged by Defendants.

Accordingly, the facts described below are uncontested and come from Defendants' Motion for Summary Judgment, Plaintiff's deposition[2], and the sworn

[2] Defendants considered the statements made by Plaintiff at his deposition as undisputed material facts for purposes of their Motion. *See* Defendants' Memorandum of Law in Support of their Motion for Summary Judgment, #48, p. 2, n.1.

affidavits of Officer Dunas and Nurse Stauffer.

On March 6, 2016, Plaintiff was a detainee at the Jerome Combs Detention Center (JCDC) in Kankakee, Illinois. At the time, Plaintiff was detained in cell 4 on the bottom tier in Maximum Security Unit A ("Max A"). Inmate Kenyada Clair was located in cell 6 on the top tier in the same unit. Pursuant to policy, each tier had two, two-hour segments per day where the inmates were allowed to come out of their cells. Whenever one tier was out of the cell for a free segment, the other tier's inmates remained locked in their cells to limit physical interactions.

At approximately 5:00 P.M. on March 6, 2016, Plaintiff was out of his cell during one of the two-hour free time intervals. Inmate Clair was in his locked cell on the top tier. Plaintiff was sitting at a table helping another inmate, Lashon Bumpers, with legal matters.

Inmate Clair spoke through his locked cell and repeatedly asked Plaintiff if he could use Plaintiff's tablet overnight. Inmate Clair told Plaintiff that his own tablet had run out of power. Plaintiff told Clair "no" several times. Then, Clair started saying that he could get Plaintiff "whooped" and told Bumpers to stop working with Plaintiff. Bumpers went into a free cell. Plaintiff reported hearing Bumpers and Clair talking through the vent system. Plaintiff was unable to hear this conversation. Plaintiff did not report this incident or inform the officers that he was nervous for an attack.

A few minutes before Plaintiff's two-hour free segment ended, Plaintiff went to take a shower. While Plaintiff was in the shower, he saw another inmate, Shorty B, look at Plaintiff in the shower and then look at Bumper's cell while pointing.

Around this time, Clair pushed his intercom button and asked Officer McCabe for a plunger to unstop his toilet. Officer McCabe told Clair he would send someone with a plunger. Office Dunas states that McCabe informed him of this request. A few minutes later, Officer Dundas was doing a security check and opened Clair's cell to give him a plunger. When Dundas opened the door, Clair pushed his way out and headed toward the showers. Dundas yelled at Clair to return to his cell, and called a "10-10" over the radio to signal a fight.

Still in the shower, Plaintiff turned the water to off and waited for it to go off (there is a delay). Plaintiff saw Clair coming down the stairs and Plaintiff pulled on his pants. Plaintiff reports hearing Dundas telling Clair to get back in his cell at least three times.

Clair came into the shower area without stopping and told Plaintiff to get out of the shower. Plaintiff refused to come out, and Clair ripped the shower curtain down. Plaintiff's back was to the wall, and Clair started swinging at Plaintiff. Bumpers came into the shower and held Plaintiff in a bear hold while Clair continued to hit Plaintiff in his eye area. Plaintiff reports that Clair was holding a small metal object that he used to hit Plaintiff.

While this was happening, Dundas retrieved his handcuffs and headed toward the entry of Max A to alert another officer. Approximately six other officers entered Max A to break up the fight. The officers threatened Clair with a taser and the inmates released Plaintiff. Plaintiff rolled onto his stomach and the officers handcuffed him. The officers took Plaintiff directly to the medical department to see the nurse.

Plaintiff estimates he was struck eight times around his right eye. He further estimates that the physical interaction lasted 45-60 seconds before the officers responded.

When Plaintiff arrived at medical, Nurse Stauffer treated Plaintiff around 5:30 P.M. She examined his injuries, applied disinfectant, and applied three steri-strips under his right eye. Stauffer found that Plaintiff was alert and oriented. Plaintiff asked Stauffer if he could go to the emergency room for stitches, and Stauffer informed him that she did not find it necessary. Stauffer told Plaintiff she would check on him in one hour.

Around 6:30 P.M., Stauffer examined Plaintiff in his cell. She instructed Plaintiff to not touch the steri-strips. Plaintiff responded that he had not touched the strips, but that he was bleeding through them. Stauffer applied additional strips and provided Tylenol and ice packs. During this visit, Plaintiff recalls that Stauffer mentioned that she could use staples if he continued to bleed.

A couple of hours later, around 8:20 PM, Stauffer visited Plaintiff in his cell a second time. Plaintiff's laceration was no longer bleeding, and Stauffer told Plaintiff he was scheduled to visit the physician assistant (PA) in the morning. In his deposition, Plaintiff admits that he washed his face prior to this visit to avoid getting staples. Plaintiff felt the staples looked painful and he preferred stitches.

In her signed affidavit, Stauffer opined that it was not medically necessary for Plaintiff to go to the emergency room. Stauffer noted that the laceration was small and non-life threatening, the steri-strips stopped his bleeding, he was alert and orientated, and he had not lost consciousness. Stauffer further noted that she gave him medication and ice packs and that he was scheduled to see the PA the following morning.

Plaintiff saw PA Huffines the next morning. Huffines removed the strips and applied eleven stitches to the wound below his eye and prescribed Ibprofen 800 mg and ice packs. PA Huffines also ordered a CT scan. Plaintiff went to the Emergency Room a few days later for the CT scan. The CT scan showed no evidence of facial fracture. Plaintiff complained of ongoing irritation, and on April 14, 2016, Plaintiff went to an outside medical provider, Fisher Swale Nicholson Eye Center. The physician found that Plaintiff had ocular trauma of the right eye, but informed Plaintiff that his eye was healing naturally.

Officer Dundas' affidavit states that the cells in Max A do not have chuckholes or any other openings. Therefore, the officers must open the door to provide inmates with an item. Dundas reiterated that toilets in this unit often became clogged. Further, Dundas stated that he had no reason to believe that Clair asked for the plunger to create an opportunity to attack Plaintiff.

Plaintiff admits that prior to the incident, he had not told the officers that he was nervous, scared, or feared an attack. He acknowledged that he was surprised by the attack. Officer Dundas stated in a sworn affidavit that he was not aware of any argument or issue between Plaintiff and Clair. The inmates were not on a no-contact list.

IV. Analysis

a. Officer Dundas

Plaintiff alleges that Officer Dundas is liable for failing to protect Plaintiff from Clair's assault. Plaintiff further alleges that Dundas is liable for opening Clair's upper tier cell door during the lower tier's free segment. Plaintiff argues that this act violated JCDC's policy of allowing only one tier out at a time.

"The Due Process Clause of the Fourteenth Amendment protects pre-trial detainees from punishment and places a duty upon jail officials to protect pre-trial detainees from violence." *Fisher v. Lovejoy*, 414 F.3d 659, 661 (7th Cir. 2005). In *Farmer v. Brennan*, the Supreme Court set the standard for deliberate indifference claims alleging failure to protect. *Farmer*, 511 U.S. 825, 834-37 (1994). There is both a subjective and objective test. The objective test requires Plaintiff to show that he was "incarcerated under conditions posing a substantial risk of serious harm." *Brown v. Budz*, 398 F.3d 904, 910 (7th Cir. 2005). Under the subjective test, a prison official is liable "only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it." *Fisher v. Lovejoy*, 414 F.3d 659, 662 (7th Cir. 2005) (citing *Farmer*, 511 U.S. at 847). Negligence or even gross negligence is insufficient. *Peate v. McCann*, 294 F.3d 879, 882 (7th Cir. 2002). Thus, to prove failure to protect, Plaintiff must show that he was incarcerated under conditions posing a substantial risk of serious harm and that Dundas knew of the substantial risk and failed to protect Plaintiff from that risk.

First, to satisfy the objective prong, the Seventh Circuit has found that allegations of being beaten by a fellow detainee are sufficient to allege "serious harm." *Brown*, 398 F.3d at 911. But, Plaintiff must also show that there was a "substantial risk" of that harm. *Id.* The Seventh Circuit has defined a substantial risk as one that is "almost certain to materialize if nothing is done." *Delgado v. Stegall*, 367 F.3d 668, 672 (7th Cir. 2004), *overruled on other grounds*. Accordingly, courts have found a substantial risk of harm when officers knew of a detainee's propensity of violence toward an individual or class of individuals or when an attack was "highly probable." *Brown*, 398 F.3d at 911.

The "serious harm" in this case was inmates attacking Plaintiff. Thus, the Court must first determine whether there was a "substantial risk" of Plaintiff being beaten.

Plaintiff's Complaint alleges that Officer Dundas violated jail policy. During his deposition, Plaintiff clarified his position that Dundas violated security protocol when he opened Clair's door while the other tier was out. Conceivably, Plaintiff is arguing that this act created a substantial risk of harm to Plaintiff. Given Plaintiff's pro se status, the Court will assume this.

As discussed above, JCDC had a policy through which the two tiers were separated from each other at all times. Each tier had two, two hour free segments, during which the other tier remained locked up. Plaintiff and Clair were on different tiers. At the time of the accident, Plaintiff's tier was in the dayroom and Clair's tier inmates were in their cells. Plaintiff, in his deposition, states that Dundas should have known that Clair's request for a plunger was a ruse to allow Clair access to break out of cell and attack Plaintiff. (Plaintiff Deposition Part 1, #48, Exhibit A, p. 114-119.) Plaintiff details a few other occasions when inmates requested plungers as a ruse to escape their cell during lock up. *Id.* at 33-37. However, Plaintiff also acknowledges that the toilets at JCDC often backed up and that inmates requested plungers as often as twice a day. *Id.* at 32.

Plaintiff acknowledges in his deposition that he had communicated with Clair and Bumpers on occasion prior to the incident, but that he had never had a negative interaction with either of them. *Id.* at 44-50. Plaintiff recalled allowing Clair to use his tablet in the past, but that was the extent of their relationship. No evidence was presented that Clair had a propensity of violence toward Plaintiff. There was no reason for officers to believe that an attack was "highly probable." Plaintiff himself was surprised by the attack. *Id.* at 61. Dundas testified that he was not aware of any argument or issue between Clair and Plaintiff. Dundas also noted that it was common practice to open an inmate's door to provide a plunger. This was the only way of providing a plunger because the cell doors did not have chuckholes or any other opening. Plaintiff does not dispute these facts. There is no evidence showing that

Dundas' act of opening the cell door to transfer a plunger created a substantial risk of serious harm to Plaintiff.

Second, as to the subjective test, there is no evidence that Dundas knew of a substantial risk of injury to Plaintiff. In his deposition, Plaintiff acknowledged that the officers did not observe Plaintiff's interaction with Clair regarding the tablet. *Id.* at 59-60. Plaintiff did not report this incident to the officers. *Id.* at 60. Plaintiff did not tell any officers that he feared an attack. *Id.* at 51-52, 60. As noted above, Plaintiff acknowledged that he was surprised by the attack. *Id*. at 61. Courts have found that knowledge of generalized fears, threats, or concerns are insufficient to satisfy the subjective test. *See Gevas v. McLaughlin*, 798 F.3d 475, 480-81 (7th Cir. 2015) ("Complaints that convey only a generalized, vague, or stale concern about one's safety typically will not support an inference that a prison official had actual knowledge that the prisoner was in danger."); *Grievson*, 538 F.3d 763, 775-78 (7th Cir. 2008) (finding that vague information about prior assaults did not put officers on notice of a specific threat). Here, Plaintiff cannot even establish that officers knew of a generalized fear or threat. Plaintiff makes no representation that any officer knew that Plaintiff was at risk of harm. No evidence shows that Dundas knew of a substantial risk of harm to Plaintiff.

Because the Court finds that Dundas did not know of a substantial risk of harm, it need not consider whether Dundas failed to take reasonable measures to abate the harm.

b. Nurse Stauffer

The deliberate indifference to a prisoner's serious medical need constitutes "unnecessary and wanton infliction of pain" prohibited by the Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). "[I]n order to prevail on an Eighth Amendment claim for failure to provide medical care, a plaintiff has the burden of demonstrating that '(1) the harm to the plaintiff was objectively serious; and (2) the official was deliberately indifferent to her health or safety.'" *Pinkston v. Madry*, 440 F.3d 879, 891 (7th Cir. 2006) (quoting *Board v. Farnham*, 394 F.3d 469, 478 (7th Cir. 2005)).

For the objective prong: "[a] serious medical condition is one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would perceive the need for a doctor's attention." *Greeno v. Daley*, 414 F.3d 645, 653 (7th Cir. 2005).

To show that the official was deliberately indifferent to Plaintiff's health, Plaintiff must show "something more than mere negligence," but it can be "satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result." *Farmer v. Brennan*, 511 U.S. 825, 835 (1970). The Seventh Circuit has noted that the question "must logically depend on what information was available to the defendant at the time that a decision was made." *O'Brien v. Indiana Dept. of Correction ex rel. Turner*, 495 F. 3d 505, 509 (7th Cir. 2007). "A prisoner's dissatisfaction with a doctor's prescribed course of treatment does not give rise to a constitutional claim unless the medical treatment is 'so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate the prisoner's condition.'" *Snipes v. DeTella*, 95 F.3d 586, 592 (7th Cir. 1996) (quoting *Thomas v. Pate,* 493 F.2d 151, 158 (7th Cir. 1974), *vacated and remanded on other grounds*).

First, the Court considers whether there is a material dispute as to whether Plaintiff had an objectively serious medical condition. Plaintiff estimated he was struck eight times around his right eye. Nurse Stauffer stated that Plaintiff had a small laceration under his right eye that was bleeding. A few days later Plaintiff underwent a CT scan that showed no evidence of facial fracture. Plaintiff was later seen by an outside medical provider who found that Plaintiff had ocular trauma of the right eye, but prescribed no further treatment.

The Seventh Circuit has held that minor injuries do not constitute an objectively serious medical need. For example, the Court has found that the following injuries do not rise to the level of an objectively serious medical need: a split lip, swollen cheek, a one-inch laceration on a temple not requiring stitches. *See Pinkston v. Madry,* 440 F.3d 879, 891 (7th Cir. 2006); *Davis v. Jones*, 936 F.2d 971, 972-73 (7th Cir. 1991). Indeed, the Seventh Circuit clarified that an objectively serious medical need is one that may be

"life threatening or pose a risk of needless pain or lingering disability if not treated at once." *Davis*, 936 F.2d at 973.

Unlike the injuries in *Pinkston* and *Davis*, Plaintiff's injury did end up requiring stitches. It is undisputed that the PA applied stitches during Plaintiff's visit the next day. Of course, Plaintiff's claim rests on the allegation that Nurse Stauffer should have sent Plaintiff to the hospital for stitches the night of the incident rather than wait for the PA visit the next day. In *Haskins v. Sumulong*, 2017 WL 1178223 (N.D. Ill. 2017), the plaintiff was assaulted by his cellmate and suffered a scalp laceration, among other injuries. The plaintiff alleged that the prison nurses were deliberately indifferent to his serious medical need when they applied triple antibiotic ointment and covered the laceration with gauze, instead of using stitches. In *Haskins*, the plaintiff's cut scabbed over a few days later and stitches were never used.

The Court recognizes that Plaintiff's injury required stitches, but also considers that the question is whether the medical need was objectively serious. Even if a laceration requiring stitches is a "serious medical need," the seriousness of the medical need must be objectively apparent. Here, Plaintiff admits that he took action to cover up the severity of the wound. He requested stitches during his first medical visit. Nurse Stauffer instead applied steri-strips to the bleeding area. On the second visit, Nurse Stauffer observed that Plaintiff was bleeding through the steri-strips. During this visit, Stauffer raised the idea of using medical staples if the bleeding continued. Plaintiff acknowledges that he did not want staples and that he actively concealed the bleeding prior to Stauffer's third visit that night. As a result, it appeared that the wound had stopped bleeding when Stauffer visited Plaintiff in his cell around 8:30 P.M. Similar to how the plaintiff's wound in *Haskins* healed without stitches, Plaintiff's laceration appeared to be healing on its own. Objectively, Plaintiff's medical need did not appear to require stitches, as the bleeding appeared to have stopped. Therefore, the Court finds that there are no facts establishing that Plaintiff suffered from an objectively serious medical need.

Second, even if the Court found that Plaintiff's medical need was objectively serious, the facts do not show that Stauffer was deliberately indifferent to Plaintiff's medical need. As noted above, the Court looks to the information available to the defendant at the time the decision was made. *O'Brien v. Indiana Dept. of Correction ex rel. Turner*, 495 F. 3d 505, 509 (7th Cir. 2007). Here, Stauffer was under the impression that the steri-strips she applied stopped Plaintiff's bleeding. This was the only information available to Stauffer at the time. Plaintiff actively concealed any contrary information by wiping away blood.

Further, Plaintiff's only claim is that his stitches were delayed overnight. Courts within the Seventh Circuit have routinely held that a short delay in treatment does not rise to the level of deliberate indifference. *See Gutierrez v. Peters*, 111 F.3d 1364, 1374 (7th Cir. 1997); *Martin v. Tyson*, 845 F.2d 1451, 1457-58 (7th Cir. 1988).

Finally, the Court notes that Plaintiff's allegations merely show that Plaintiff disagreed with the treatment given. Plaintiff's dissatisfaction with Stauffer's treatment is insufficient to raise a constitutional claim. *See Snipes v. DeTella*, 95 F.3d 586, 592 (7th Cir. 1996).

The Court finds that the evidence does not show that Stauffer was deliberately indifferent to any serious medical need.

V. Conclusion

For the reasons discussed above, the Court finds there is no genuine dispute as to any material fact and Defendants are entitled to judgment as a matter of law.

IT IS, THEREFORE, ORDERED:

1. Defendants' Motion for Summary Judgment (#48) is GRANTED. The Court directs the Clerk to enter judgment in Defendant's favor and against Plaintiff. All pending motions are denied as moot, and this case is terminated with the parties to bear their own costs. All deadlines and settings on the Court's calendar are vacated.

2. If Plaintiff wishes to appeal this judgment, he must file a notice of appeal with this Court within 30 days of the entry of judgment. Fed. R. App. P. 4(a)(4).

3. If Plaintiff wishes to proceed in forma pauperis on appeal, his motion for leave to appeal in forma pauperis must identify the issues that he will present on appeal to assist the Court in determining whether the appeal is taken in good faith. *See* Fed. R. App. P. 24(a)(1)(c); *Celske v. Edwards*, 164 F.3d 396, 398 (7th Cir. 1999) (an appellant should be given an opportunity to submit a statement of his grounds for appealing so that the district judge "can make a responsible assessment of the issue of good faith."); *Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000) (providing that a good faith appeal is an appeal that "a reasonable person could suppose . . . has some merit" from a legal perspective). If Plaintiff chooses to appeal, he will be liable for the $505.00 appellate filing fee regardless of the outcome of the appeal.

ENTERED this 27th day of June, 2017.

s/ERIC I. LONG
UNITED STATES MAGISTRATE JUDGE