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Clerk, U.S. District Court, ILCD

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

JESSE VILLAGOMEZ,	)	
	)	
Plaintiff,	)	
	)	
v.	)	15-CV-2178
	)	
ROBIN PASSWATER,	)	
MICHAEL SHREFFLER,	)	
AND DAWN O'DELL,	)	
	)	
Defendants.	)	

ORDER

COLIN STIRLING BRUCE, U.S. District Judge.

Plaintiff, proceeding pro se from his detention in the Jerome Combs Detention Center, pursues claims arising from an alleged failure to protect him from an assault outside a bar in the early morning hours of May 19, 2014. He also contends that he was denied necessary medical care for his injuries while he was in police custody.

Defendants' motion for summary judgment is before the Court. In short, Defendant Officer Shreffler cannot be held constitutionally liable for allegedly not acting quickly enough to break up the

assault on Plaintiff, and the video evidence shows that Plaintiff was not denied any necessary medical care.

Summary Judgment Standard

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A movant may demonstrate the absence of a material dispute through specific cites to admissible evidence, or by showing that the nonmovant "cannot produce admissible evidence to support the [material] fact." Fed. R. Civ. P. 56(c)(B). If the movant clears this hurdle, the nonmovant may not simply rest on his or her allegations in the complaint, but instead must point to admissible evidence in the record to show that a genuine dispute exists. Id.; Harvey v. Town of Merrillville, 649 F.3d 526, 529 (7th Cir. 2011). "In a § 1983 case, the plaintiff bears the burden of proof on the constitutional deprivation that underlies the claim, and thus must come forward with sufficient evidence to create genuine issues of material fact to avoid summary judgment." McAllister v. Price, 615 F.3d 877, 881 (7th Cir. 2010).

At the summary judgment stage, evidence is viewed in the light most favorable to the nonmovant, with material factual disputes resolved in the nonmovant's favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A genuine dispute of material fact exists when a reasonable juror could find for the nonmovant. Id.

Analysis

Plaintiff does not address each of Defendants' proposed undisputed facts, but he does set forth his version of events, which the Court has considered.

Around 2:00 a.m. on May 19, 2014, Defendant Shreffler, a Kankakee police officer, responded to a call that shots had been fired at the Whatever Bar in Kankakee, Illinois. Officer Shreffler described the scene as "mass chaos," a description Plaintiff does not dispute. (Shreffler Aff. para. 9.)

According to the squad car camera video, which Officer Shreffler had turned on the entire time, Officer Shreffler arrived on the scene at about 2:02:55 a.m. (Defs.' Ex. E, squad car video, 2:02:55.) A few seconds later, Plaintiff is seen running in front of the squad car, being chased by two individuals. More individuals

run past after that. (Ex. E, 2:03:06.) Defendant Shreffler exits his car about 20 second later and moves in the same direction as Plaintiff. Plaintiff does not dispute that this video is an accurate depiction. (Pl.'s Dep. 39.)

The parties agree that the individuals chasing Plaintiff, along with at least two others, tackled Plaintiff and started attacking Plaintiff, apparently because they believed Plaintiff was responsible for the shooting death of their cousin. This assault was outside of the camera's recording range. Plaintiff agrees that Defendant Shreffler told the attackers to get off of Plaintiff, and then Shreffler picked Plaintiff up off the ground. (Pl.'s Dep. 23-24.) Plaintiff claims that, as Defendant Shreffler picked Plaintiff up off the ground, Shreffler remarked that Plaintiff got what he deserved for shooting the cousin. (Pl.'s Dep. 23.) In addition to being attacked, Plaintiff was robbed of his watch, cash, and cell phone by his attackers.

Plaintiff claims that Defendant Shreffler could have prevented the attack if Shreffler had exited his car immediately after seeing the chase and intervened sooner. Plaintiff alleged in his complaint that Shreffler "sat and watched" the assault until other officers

arrived (Compl. p. 5), though in his deposition Plaintiff stated that he could not see Shreffler during the attack. (Pl.'s Dep. 23.)

The video does not support Plaintiff's claims that Defendant Shreffler unreasonably delayed intervening. Defendant Shreffler exits his squad car about 30 seconds after arriving and is escorting Plaintiff to the squad car about two minutes after Plaintiff ran in front of the squad car. (Ex. E, 2:05:06.) In any event, whether Defendant Shreffler could have broken up the attack sooner is immaterial. Defendant Shreffler cannot be held liable for the attack on Plaintiff. Plaintiff argues that Defendant Shreffler had a duty to "protect and serve," but that motto does not translate into a constitutional duty to protect a citizen from a private actor's violence. "As a general matter, . . . a State's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause." DeShaney v. Winnebago County Dept. of Social Serv., 489 U.S. 189. 197 (1989). A police officer might be liable if the officer *creates* the danger, but simply failing to act in the face of existing danger is not enough. Doe v. Village of Arlington Heights, 782 F.3d 911, (7th Cir. 2015)("When courts speak of the state's 'increasing' the danger of private

violence, they mean the state did something that turned a potential danger into an actual one, rather than that it just stood by and did nothing to prevent private violence.'")(quoting Sandage v. Bd of Comm'rs, 548 F.3d 595, 599 (7th Cir. 2008).

Plaintiff argues that Defendant Shreffler also put Plaintiff in danger by leaving Plaintiff alone, handcuffed, in the squad car while others milled about the scene, banging on the car window and threatening Plaintiff verbally and with hand gestures. Plaintiff's cites to the video do not support that he was threatened, and these allegations were not included in Plaintiff's complaint. Colbert v. City of Chicago, 851 F.3d 649, 657 (7th Cir. 2017)(unpleaded claims cannot be added in response to summary judgment motion). In any event, Plaintiff does not dispute that he was not injured by anyone after being placed in the squad car. Fear of assault does not give rise to a constitutional claim. *See* Babcock v. White, 102 F.3d 267, 272 (7th Cir. 1996)("[I]t is the reasonably preventable assault itself, rather than any fear of assault, that gives rise to a compensable claim under the Eighth Amendment.")

Plaintiff also argues that the individuals who attacked and robbed him should have been arrested. This is not a claim in the

case nor could it be. *See* Town of Castle Rock v. Gonzales, 545 U.S. 748, 768 (2005)("[T]he benefit that a third party may receive from having someone else arrested for a crime generally does not trigger protections under the Due Process Clause."). Similarly, there is no constitutional claim which arises from Plaintiff's allegation in his response that police protocols and procedures were not followed. *See* Thompson v. City of Chicago, 472 F.3d 444, 454 (7th Cir. 2006)("T]his court has consistently held that '42 U.S.C. § 1983 protects plaintiffs from constitutional violations, not violations of state laws or . . . departmental regulations and police practices.'")(quoted cite omitted).

Next up is Plaintiff's claim that all three Defendants failed to obtain necessary medical treatment for the injuries Plaintiff suffered from the attack. The Fourth Amendment's objective reasonableness standard applies to this claim because Plaintiff had been arrested but had not yet had a judicial determination of probable cause. Ortiz v. City of Chicago, 656 F.3d 523, 530 (7th Cir. 2011). Factors informing the objective reasonableness inquiry are the seriousness of the medical need, whether a defendant had notice of the medical need, the treatment requested, and any legitimate governmental

interests such as "administrative, penological, or investigatory concerns." Id.

Plaintiff claims that he was "bleeding profusely" and "bleeding out" from "multiple gashes throughout his head, arm, hands, and face." He asserts that he needed stitches for a hand wound, had a "hole in his arm," and had a "cracked head." (Pl.'s Resp. pp. 2, 7, 10.)

No rational juror could agree with Plaintiff's descriptions of his wounds in light of the video evidence. "When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." Scott v. Harris, 550 U.S. 372, 380 (2007). In Scott, a videotape of a police car chase directly contradicted the plaintiff's allegations of excessive force. The U.S. Supreme Court held that the video was dispositive. Id. at 378; *see also* Williams v. Brooks, 809 F.3d 936, 942 (7th Cir. 2016) ("When the evidence includes a videotape of the relevant events, the Court should not adopt the nonmoving party's version of the events when that version is blatantly contradicted by the videotape.")

Here, the video recording from the squad car shows Officer Shreffler escorting Plaintiff to the squad car at the scene. Plaintiff is walking of his own accord, in no visible distress, has what appears to be a large scrape on his arm which is bleeding, and is holding some kind of cloth against that wound. He is not profusely bleeding or "bleeding out." Further, he sits silently in the squad car waiting for Officer Shreffler to return and does not speak while Officer Shreffler is driving Plaintiff to the police station. After the squad car arrives at the station, Plaintiff is escorted from the car, again in no visible distress and with no serious injury apparent. (Ex. E. 2:05, 3:09-3:15.) Plaintiff contends that the video shows him stating that he needs to go to the hospital, but his cite does not support that conclusion, and, in any event, would not allow a juror to conclude that Plaintiff actually needed to go to a hospital in light of the video.

Plaintiff's interrogation at the police station, which lasted about eight hours, was also recorded. (Defs.' Ex. F.) Plaintiff contends that the recording did not begin until after pictures were taken of Plaintiff's wounds, but that is immaterial. The video shows that Plaintiff had some oozing, large scrapes on one arm and a cut

on his nose with blood on it. Defendant Passwater, a Commander at the police department, interrogated Plaintiff. Passwater provided paper towels and sterile wipes for Plaintiff to clean his wounds and to hold against the wound on his arm that was oozing blood. (Ex. F, approx. 3:47; 31:56.) The oozing was controlled with the towels and wipes provided. At some point in the interrogation, Passwater described Plaintiff's scrape on his arm as "road rash," an apt description. (Ex. F., approximately 3:45, *et seq.*)

Plaintiff asserts that he asked for medical attention before the interrogation video started recording, (Pl.'s Dep. 47-50), but he does not dispute that, throughout the entire recorded interrogation, Plaintiff did not request medical attention. During the interrogation, Plaintiff did not appear in physical distress or in need of any medical attention other than what Defendant Passwater provided. Plaintiff was allowed to go to the bathroom to wash up, and at some point or points he feel asleep. (Ex. F., approximately 3:48, *et seq*; 2:16, *et seq.*) Later, when the interrogation resumed, Plaintiff's arm wound was no longer bleeding and he has some bandages on his arm. He eats some sausage and cheese biscuits and has some orange juice. (Ex. F, approx. 8:37, et seq.) He stands

up, in no apparent distress, marking on a map what happened during the incident. (Ex. F., approx. 7:33, et seq.) There is no profuse bleeding or bleeding out, no hole in the hand, no cracked head. No evidence supports Plaintiff's assertion that he needed stitches. In short, the interrogation video would preclude a rational juror from accepting Plaintiff's version of events.

Plaintiff's last claim is a claim against Defendant Nurse O'Dell, a nurse at the Kankakee County Sheriff's Office, for failing to treat his wounds. This claim also fails. Well before the interrogation ended, Plaintiff no longer had any oozing wounds. After being charged at the police station with murder and attempted murder, he was transported to the Jerome Combs Detention Center.[1] Nurse O'Dell first interacted with Plaintiff at around 8:00 p.m. on May 19, 2017, about 18 hours after Plaintiff was attacked. Plaintiff does not dispute that Nurse O'Dell provided Plaintiff with an opportunity wash his hand and also with band-aids and antibiotic ointment after she finished her rounds. (Pl.'s Resp. p. 40, paras. 42-43; Pl.'s Dep. 54.) Plaintiff filed a sick call request on May 23, 2014, asserting that he had "2 real bad cuts on my hands and one on my

[1] Plaintiff's criminal case remains pending.

arm and head that needs to be looked at cause there [sic] hurtin' bad and I need band-aids and some antibiotic ointment please." (d/e 32-2 p. 54.) Nurse O'Dell responded that the wounds had been cleaned and bandaged on May 19 and that she would send more band-aids and antibiotic ointment. Plaintiff does not dispute that Nurse O'Dell provided additional band-aids and antibiotic ointment to Plaintiff on May 24, 2014, and had no further contact with Plaintiff. (O'Dell Aff. paras. 9-12.)

These facts would not allow a rational juror to conclude that Nurse O'Dell responded unreasonably to Plaintiff's complaints. Plaintiff contends that Nurse O'Dell should have arranged for Plaintiff to see a doctor, but he offers no evidence to challenge Nurse O'Dell's professional assessment that Plaintiff simply needed to keep his wounds clean, covered, and treated with antibiotic ointment. Roe v. Elyea, 631 F.3d 843, 857 (7th Cir. 2011)(Deliberate indifference to a medical need arises "'if the decision by the professional is such a substantial departure from accepted professional judgment, practice, or standards, as to demonstrate that the person responsible actually did not base the

decision on such a judgment.'" (*quoting* Sain v. Wood, 512 F.3d 886, 894-95 (7th Cir. 2009).

IT IS THEREFORE ORDERED:

1. Plaintiff's motion for summary judgment is denied (31).

2. Defendants' motion to strike Plaintiff's reply is denied (43).

3. Defendants' motion for summary judgment is granted (d/e 32).

4. Plaintiff's motion for a status hearing is denied (d/e 44).

5. The clerk of the court is directed to enter judgment in favor of Defendants and against Plaintiff. All pending motions are denied as moot, and this case is terminated. All deadlines and settings on the Court's calendar are vacated.

6. Federal Rule of Civil Procedure 54(d) provides that costs should be awarded to the prevailing party. Defendants' bill of cost is due within 30 days after the entry of judgment. CDIL-LR 54.1. If Plaintiff objects to having costs assessed against him, he must attach his trust fund ledgers for the past six months and demonstrate that he does not have the ability to pay costs now or in the future.

7. 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). A motion for leave to appeal in forma pauperis should identify the issues Plaintiff will present on appeal. See Fed. R. App. P. 24(a)(1)(c). If Plaintiff does choose to appeal, he will be liable for the $505.00 appellate filing fee regardless of the outcome of the appeal.

ENTER: 7/13/2017

FOR THE COURT:

s/Colin Stirling Bruce
COLIN STIRLING BRUCE
UNITED STATES DISTRICT JUDGE