

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION**

Sean Hayden, Jr.,)	
)	
Plaintiff,)	
)	Case No. 20 C 50424
v.)	
)	Hon. Philip G. Reinhard
Sgt. James Stevenson, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

Defendants’ motion for summary judgment [40] is granted, and judgment is entered for defendants on all counts. This case is closed.

STATEMENT-OPINION

Plaintiff Sean Hayden, Jr., who is represented by counsel, is asserting § 1983 claims based on an allegation of excessive force. The only remaining defendants in the case are Sergeant James Stevenson and the County of DeKalb.

Before the court is defendants’ motion for summary judgment [40]. The motion, along with a brief [41] and a Rule 56.1 statement [42], were filed on March 31, 2022. A briefing schedule was then set. Plaintiff was required to file his response brief by May 3, 2022 [44]. On May 3, 2022, he filed a motion for a 30-day extension of time [47]. That motion was granted, and the new due date was set for June 2, 2022. On June 8, 2022, plaintiff filed a second motion for extension of time [50], asking for an additional 14 days. That motion was also granted, and the new due date was set for June 16, 2022 [52]. The order granting this second motion for extension of time is the last entry on the docket. No response brief has been filed by plaintiff. Counsel for plaintiff has not filed a third motion for extension of time, nor moved to withdraw, nor otherwise indicated that plaintiff still desires to prosecute this case. Plaintiff has had ample time to file a response brief if he wanted to oppose the summary judgment motion. It is now time to rule on that motion.

Because plaintiff has not responded to the motion, this court must accept as true the facts in defendants’ Rule 56.1 statement. *See Curtis v. Costco Wholesale Corp*, 807 F.3d 215, 218-19 (7th Cir. 2015) (“The non-moving party’s failure to admit or deny facts as presented in the moving party’s statement or to cite to any admissible evidence to support facts presented in response by the non-moving party render the facts presented by the moving party as undisputed.”).

Set forth below is a condensed summary of those facts. Plaintiff Sean Hayden Jr. was a pretrial detainee at the DeKalb County Jail. In the early afternoon on November 1, 2018, he became angry and started yelling profanities and banging his cell windows and kicking his cell door. Around 10:00 p.m., he was moved to another cell, and again kicked his cell door and also banged his head on it. Defendant Stevenson talked to him but plaintiff did not listen to him and kept beating on his cell door. Stevenson decided that plaintiff should be moved to disciplinary status in M-Block. Stevenson walked plaintiff to the main floor at M-block. Also present were deputies Lindsey Smith, Robin Ulrey, and Lucas Chambers.

The encounter that followed was caught on surveillance video, which this court has reviewed. The video is about two minutes long.¹ Stevenson told plaintiff, who was not handcuffed, to go into M-Block. Plaintiff refused. Stevenson warned plaintiff he might be tased if he did not comply. Plaintiff said “go ahead, I have ain’t never been tased before anyway, so do what you got to do.” Stevenson and two deputies grabbed plaintiff’s arm. He still refused to go into the cell and actively resisted the officers. One deputy then performed a leg sweep, causing that deputy, plaintiff, and Stevenson to tumble to the ground. Deputy Smith deployed her Taser on plaintiff, but it apparently missed or had no effect on plaintiff. Plaintiff laid on the ground and laughed at the officers. Deputy Ulrey deployed her Taser, but it also either missed or had no effect. Plaintiff laughed and said “you missed.” Plaintiff stood up and tried to get away. He was headed toward an open door, having pulled free from Stevenson’s grip. Plaintiff then fell to the ground, and Stevenson deployed his taser, which finally incapacitated plaintiff. Thereafter plaintiff was placed in a padded cell. After this point, Stevenson had no further involvement with plaintiff.

The complaint contains three counts. Count I is a § 1983 Fourth Amendment excessive force claim. Count II is a § 1983 Fourth Amendment claim for failure to intervene. Count III is a § 1983 *Monell* claim against the County of DeKalb.

ANALYSIS

Defendants argue that summary judgment should be granted on all counts. The central question at issue is whether defendant Stevenson (or any of the other three officers) used excessive force against plaintiff. Defendants argue that the collective force used, which included a leg sweep, physical restraint, and three taser deployments, was objectively reasonable. This court agrees. The video and deposition testimony make clear that no reasonable jury could find otherwise. In *Kingsley v. Hendrickson*, 576 U.S. 389 (2015), the Supreme Court listed the following factors that may be considered in evaluating an excessive force claim where officers used a taser on a pretrial detainee: “(1) the relationship between the need for the use of force and the amount of force used; (2) the extent of the plaintiff’s injury; (3) any effort made by the officer to temper or to limit the amount of force; (4) the severity of the security problem at issue; (5) the threat reasonably perceived by the officer; and (6) whether plaintiff was actively resisting.” [41 at 5 (quoting *Kingsley*, 576 U.S. at 397).] Applying these factors to the undisputed facts here, the court finds that the various uses of force used during this short two-minute encounter were objectively reasonable. As summarized above, before using their tasers, officers first tried several times verbally to persuade plaintiff to cooperate, then they tried to guide him with light physical touch, then they employed a leg sweep and attempted to handcuff him, and only then, after these measures failed, did they deploy their tasers. In short, they tried to temper the force used. Also justifying the use of force was the fact that plaintiff actively and repeatedly resisted their efforts and at one point seemed to be trying to run toward an open door. He even taunted the officers, by laughing at them as they tried to subdue him with increasing uses of force.

This conclusion is also supported by the case law. Defendants have cited to a series of Seventh Circuit cases where the use of force, including tasers, was found to be reasonable under similar circumstances. *See, e.g., Dockery v. Blackburn*, 911 F.3d 458, 467 (7th Cir. 2018) (officer used taser four times on a pretrial detainee who was angry and confrontational); *Abbot v. Sangamon Cnty.*, 705 F.3d 706,

¹ Toward the latter half of the video the participants are partially obscured by an open door. However, the court has also relied on the deposition testimony describing what happened during the encounter.

725-26 (7th Cir. 2013) (officer used taser three times on a subject who was actively resisting and fighting with the officer); *Husnik v. Engles*, 495 Fed. Appx. 719 (7th Cir. 2012) (officers used taser on pretrial detainee who resisted going into his cell); *Clarett v. Roberts*, 657 F.3d 665, 675 (7th Cir. 2011) (taser used three times on actively resisting suspect); *Forrest v. Prine*, 620 F.3d 739, 745 (7th Cir. 2010) (taser used against a large arrestee who was physically combative). These cases support the grant of summary judgment to defendants here. Alternatively, the court would grant summary judgment to defendants based on their affirmative defense of qualified immunity. To overcome this defense, plaintiff must either point to an existing precedent showing the right was clearly established and “beyond debate” or show that the conduct was so egregious that no officer could have believed he was acting lawfully. *See generally Doxtator v. O’Brien*, 39 F.4th 852, 863 (7th Cir. 2022). Since plaintiff has not filed any response brief, he has not pointed to any case law showing this issue was beyond debate or that the conduct was egregious.

Because plaintiff has no excessive force claim, his claim for failure to intervene to prevent such force (count II), as well his *Monell* claim (count III), both necessarily fail as well. Plaintiff has also made a few other allegations, but they are undeveloped and do not survive summary judgment either. For example, he alleges that someone kneeled on his neck while he was being handcuffed. It is hard to see on the video whether anyone in fact ever kneeled on his neck, but even assuming this happened, it is clear that it was not defendant Stevenson who did it and that he had no realistic chance to stop it. Also plaintiff has not alleged he suffered any additional injury from any alleged kneeling. Plaintiff has also alleged that, after this incident, he was put in a padded cell and a deputy wearing gloves punched him. However, plaintiff was not able to identify who punched him and, importantly, conceded that it was not defendant Stevenson who punched him.

For all the above reasons, the court grants summary judgment to defendants on all counts.

Date: 11/02/2022

ENTER:


United States District Court Judge

Electronic Notices.