UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LOUIS C. KEYS,

Plaintiff,

v. Case No. 18-CV-924

SCHEND, ET AL,

Defendants.

DEFENDANTS' BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

On June 19, 2018, the plaintiff filed the Complaint in this matter. [Doc. 1]. On September 13, 2018, the Court screened the plaintiff's Complaint. [Doc. 10]. The Court allowed the plaintiff to proceed on a claim that his Eighth Amendment rights were violated during a van ride from the Columbia Correctional Institution to the Winnebago County Jail. The plaintiff claims that he was not placed in a seatbelt inside the van and that defendant Clayton drove recklessly.

The facts of this case demonstrate that the plaintiff's claims are unfounded. The plaintiff was provided with a seatbelt for his voluntary use. Likewise, for safety reasons, the defendants did not place the plaintiff in a seatbelt. Additionally, defendant Clayton did not drive recklessly. In fact, if that had occurred, then defendant Schend would have intervened to stop it and later reported defendant Clayton for doing so.

The facts of this case demonstrate the neither defendant acted with deliberate indifference to a substantial risk of harm to the plaintiff in violation of the Eighth Amendment. The defendants are entitled to judgment as a matter of law and the case should be dismissed.

II. FACTS

The plaintiff, Louis C. Keys, is an adult resident of the State of Wisconsin with a previous mailing address of c/o Kettle Moraine Correctional Institution, P. O. Box 282, Plymouth, WI 53073. [Doc. 1]. Plaintiff's current mailing address is Plaintiff's current mailing address is c/o Columbia Correctional Institution, P. O. Box 900, Portage, WI 53901.

The plaintiff filed his complaint on June 19, 2018 [Complaint-Doc 1]. The defendants are Kirk Schend and Lyle Clayton. [Doc 10]. At the time of the incident alleged in the Complaint, the defendants were employed by the Winnebago County Sheriff's Office in Oshkosh, Wisconsin. [Schend Aff., ¶ 2; Clayton Aff., ¶ 2].

Jurisdiction and venue are proper in this case.

On June 21, 2017, Deputy Lyle Clayton was assigned, together with Captain Kirk Schend, to transport 6 Winnebago County Jail inmates from the jail in Oshkosh, Wisconsin to the Dodge Correctional Institution in Waupun, Wisconsin and to pick up 3 prison inmates for the return trip to the Winnebago County Jail. [Clayton Aff., ¶ 5; Schend Aff., ¶ 5].

Deputy Lyle Clayton and Captain Kirk Schend transported the 6 inmates, without incident, to the Dodge Correctional Institution in a 2017 Chevrolet Express van that was specifically modified for the secure transportation of prisoners. [Clayton Aff., ¶6; Schend Aff., ¶ 6]. The van contained 3 secure compartment cells with one cell capable of holding 2 prisoners, one cell capable of holding 3 prisoners, and one cell capable of holding 5 prisoners. [Clayton Aff., ¶ 7; Schend Aff., ¶ 6]. The secure compartment cells are separated by steel walls but have a steel mesh window for communication purposes. [Clayton Aff., ¶ 8].

The van is equipped with security cameras to permit law enforcement officers to monitor prisoners being transported. [Clayton Aff., ¶ 9]. The van is also equipped with lap seat belts for prisoners to use, if they choose. [Clayton Aff., ¶ 10, Exs. A-D; Schend Aff., ¶ 7]

After taking custody of 2 inmates at the Dodge Correctional Institution inmates, Deputy Lyle Clayton and Captain Kirk Schend drove to the Columbia Correctional Institution to take custody of Mr. Louis Keys who was also being transferred to the Winnebago County Jail for a court appearance. This transfer was pursuant to a Writ of Habeus Corpus issued by the Winnebago County Circuit Court. [Clayton Aff., ¶ 12, Ex. E; Schend ¶¶ 9, 10]. At the Columbia Correctional Institution, Deputy Lyle Clayton exited the van and positioned himself at the doors of the van to assist Mr. Keys up the stairs and into the cell on the passenger side of the van. [Clayton Aff., ¶ 13; Schend Aff., ¶ 13],

Upon seeing the van, Mr. Keys initially refused to enter, calling the cell in the van a "dog cage." [Clayton Aff., ¶ 14; Schend Aff., ¶ 14]. Deputy Lyle Clayton informed Mr. Keys that the van was there to provide transportation to the Winnebago County Jail so that he could attend his court date and that it was his choice whether to attend the court date but that there was no other means of transport that would be provided. [Clayton Aff., ¶ 15; Schend Aff., ¶ 15].

Mr. Keys did not enter the van until Columbia Correctional Institution staff approached to retake custody of him. Upon the approach of prison staff, Mr. Keys got into the van and the cell door was locked. [Clayton Aff., ¶ 16; Schend Aff., ¶ 16].

Mr. Keys was shackled at his feet and waist with his hands secured by handcuffs to the front of his body and held in position with a waist strap. [Clayton Aff., ¶ 17; Schend ¶ 8].

Mr. Keys did not request assistance with securing the lap belt on the seat in his cell inside the van and was not prevented by the restraints from applying the lap belt himself. [Clayton Aff., ¶18; Schend Aff., ¶ 17].

Transported inmates have successfully used the lap seat belt by themselves in the van during prior transportation to and from the Winnebago County Jail. [Clayton Aff., ¶ 19; Schend Aff., ¶ 10].

Transport officers are trained to not secure inmates by attaching them to transport vehicles. This was for the safety of the inmate in the event of a required emergency exit from the vehicle. [Clayton Aff., ¶ 21; Schend Aff., ¶ 9].

Deputy Lyle Clayton was also trained to not reach across the body of any inmate because doing so would place a law enforcement officer in a vulnerable position and risk being attacked by the inmate. This was particularly true in the case of an agitated inmate such as Mr. Keys who had refused to enter the vehicle. [Clayton Aff., ¶ 22].

Winnebago County Sheriff's Office Policy 552 prohibits the securing of inmates to transport vehicles. [Clayton Aff., ¶ 20, Ex. F].

After Mr. Keys was placed in the van, Deputy Lyle Clayton exited the Columbia Correctional Institution facility for the return trip to the Winnebago County Jail. [Clatyon Aff., ¶ 23; Schend Aff., ¶ 18]. Shortly after exiting the Columbia Correctional Institution parking lot, they were notified to pick up some personal property at the Dodge Correctional Institution gatehouse. [Clayton Aff., ¶ 24]. Deputy Lyle Clayton drove the van to the Dodge Correctional Institution in Waupun, Wisconsin to pick up the property as ordered. [Clayton Aff., ¶ 25].

When Deputy Lyle Clayton drove up to the Dodge Correctional Institution gatehouse and stopped, Captain Kirk Schend exited the van. [Clayton Aff., ¶ 26]. After Captain Kirk Schend exited the van, Deputy Lyle Clayton heard a loud noise from the rear passenger side of the van where Mr. Keys was seated. [Clayton Aff., ¶ 27; Schend ¶ 19]. Deputy Lyle Clayton looked at the security camera display in the van and observed that all inmates in the van were in a seated position. [Clayton Aff., ¶ 28].

At the gate house, Captain Kirk Schend was given a brown paper bag and returned to the van. [Clayton Aff., ¶ 29]. Deputy Lyle Clayton exited the parking area of the Dodge Correctional Institution and, in the van's camera display, saw the plaintiff ease himself from a seated position and lower himself in a controlled manner to the floor of the van. The van was traveling approximately 5 miles per hour when Deputy Lyle Clayton saw Mr. Keys take himself to the floor of the van. [Clayton Aff., ¶ 30]. Deputy Lyle Clayton did not see or hear the plaintiff fall in the van. [Clayton Aff., ¶ 31].

Deputy Lyle Clayton pulled over, stopped the van, and asked the plaintiff if he was injured. [Clayton Aff., ¶ 32; Schend Aff., ¶ 20]. The plaintiff responded that he had fallen and hit his head. [Clayton Aff., ¶ 33; Schend Aff., 21].

The plaintiff returned to his seat, was verbalizing with Deputy Lyle Clayton and Captain Kirk Schend. The plaintiff did not have visible injuries apparent on the camera display. [Clayton Aff., ¶ 34; Schend Aff., ¶ 22]. Deputy Lyle Clayton and Captain Kirk Schend decided that the best option was to return the van to the Waupun Correctional Institution secure area so that the plaintiff could be examined for injury. [Clayton Aff., ¶ 35].

Deputy Lyle Clayton drove the approximately 2 city blocks to the Waupun Correctional Institution gatehouse. [Clayton Aff., ¶ 36]. At the Waupun Correctional Institution gatehouse, Captain Kirk Schend exited the van and explained the situation to institution staff over the intercom telephone. [Clayton Aff., ¶ 37].

While Captain Kirk Schend spoke with Waupun Correctional Institution staff, Deputy Lyle Clayton contacted the Winnebago County Sheriff's Office dispatch at 3:18 p.m., to advise them of their location and to explain the situation. [Clayton Aff., ¶ 38]. They were permitted to enter the secure parking area of the Waupun Correctional Institution and he parked the van. [Clayton Aff., ¶ 39].

Deputy Lyle Clayton and Captain Kirk Schend visually observed and spoke with the plaintiff and asked if he needed medical attention. The plaintiff did not appear to need medical attention and responded appropriately to verbal cues. [Clayton Aff., ¶ 40; Schend Aff., ¶¶ 23, 24]. The plaintiff refused medical treatment at the Waupun Correctional Institution, stated that he was ok, and that he would wait to see medical personnel at the Winnebago County Jail. [Clayton Aff., ¶ 41]. Deputy Lyle Clayton again contacted Winnebago County Sheriff's Office dispatch to provide updated information and to advise them that he and Captain Kirk Schend were enroute to the jail. [Clayton Aff., ¶ 42].

Upon arrival at the Winnebago County Jail, the Health Services Unit (HSU) was contacted. [Clayton Aff., ¶ 43; Schend Aff., ¶ 25]. The plaintiff was examined by a nurse upon arrival at the Winnebago County Jail. [Clayton Aff., ¶ 44; Schend Aff., ¶ 25].

If Mr. Keys was injured and required medical treatment beyond what the nurse indicated, Deputy Lyle Clayton would have been directed to transport the plaintiff to a local hospital for further assessment and treatment. The plaintiff was examined by the nurse and booked into the Winnebago County Jail without the need for outside medical treatment. [Clayton Aff., ¶ 45].

Deputy Lyle Clayton did not drive in a reckless manner at any time during the transport of Mr. Keys from the Columbia Correctional Institution to the Winnebago County Jail, including the stop at the Dodge Correctional Institution. [Clayton Aff., ¶ 46; Schend Aff., ¶ 26].

The plaintiff did not ask Deputy Lyle Clayton to stop driving recklessly and did not say anything about how Deputy Lyle Clayton was driving at any time. [Clayton Aff., ¶ 47; Schend Aff., ¶ 28]. If Captain Kirk Schend had observed Deputy Lyle Clayton driving in a reckless manner, then he would have ordered Deputy Lyle Clayton to stop. [Schend Aff., ¶ 27]. If the plaintiff had complained about Deputy Lyle Clayton's driving, then Captain Kirk Schend would have performed his own analysis of how Deputy Lyle Clayton was driving and if he found it to

be reckless, then Captain Kirk Schend would have ordered it to stop. [Schend Aff., ¶ 29]. If Deputy Lyle Clayton had continued to drive in a reckless manner, then Captain Kirk Schend would have first replaced Deputy Lyle Clayton as driver of the transport van and would have reported this action to superior officers at the Winnebago County Jail. [Schend Aff.,¶ 30].

Neither Deputy Lyle Clayton nor Captain Kirk Schend refused to apply a lap seat belt to the plaintiff and did not see or hear Mr. Keys request that anyone secure him in a lap seat belt in the van. [Clayton Aff., ¶ 48; Schend Aff., ¶ 31].

III. SUMMARY JUDGMENT STANDARD

A motion for summary judgment should be granted by a court if the pleadings, depositions, answers to interrogatories, admissions, and affidavits "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Material facts are those facts which, under the governing substantive law, "might affect the outcome of the suit." *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).* The party moving for summary judgment has the initial burden of asserting the absence of any dispute of material fact. *Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).* To withstand summary judgment, however, the non-moving party "must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). The court must draw all reasonable inferences from the record in favor of the non-moving party. *Johnson v. Pelker, 891 F.2d 136, 138 (7th Cir. 1989).* A court is not required to draw unreasonable inferences from the record solely to prevent the entry of summary judgment. *Parker v. Federal Na. Mortg. Ass'n., 741 F.2d 975, 980 (7th Cir. 1984).* A complete failure to prove an essential element of the nonmoving party's case necessarily renders all other facts immaterial, and thus, there can be no genuine issue of material fact. *National Soffit and Escutcheons, Inc. v. Superior Systems, Inc., 98 F.3d 262, 265 (7th Cir. 1996).*

IV. THE DEFENDANTS DID NOT VIOLATE THE PLAINTIFF'S EIGHTH AMENDMENT RIGHTS.

On September 13, 2018, the Court issued its Screening Order. [Doc. 10]. In that Order, the Court permitted the plaintiff to proceed on an Eighth Amendment deliberate indifference to a substantial risk of serious harm claim against Winnebago County Sheriff's Office Corrections Deputy Lyle Clayton and Winnebago County Sheriff's Office Captain Kirk Schend. The undisputed facts of this case demonstrate that the plaintiff's claim fails as a matter of law and must be dismissed.

The crucial facts alleged in the Complaint are summarized as follows: On June 21, 2017, the plaintiff was a prison inmate incarcerated at the Columbia Correctional Institution in Portage, Wisconsin. Defendants Clayton and Schend arrived in a Winnebago County van to transport the plaintiff to the Winnebago County Jail because the plaintiff had a court date in Winnebago County Circuit Court the next day. The van was specifically modified to contain secure compartments designed to transport incarcerated persons. The compartments had bench seats with available lap seat belts.

The plaintiff saw the van and refused to enter it. Because he was upset, the defendants considered him an agitated inmate who could threaten their safety. As a result, the training received by the defendants indicated that they not place themselves in close proximity to the plaintiff by assisting the plaintiff with securing the seatbelt. Irrespective of this, the plaintiff was not prevented from securing his own seatbelt.

The plaintiff asserts that defendant Clayton drove recklessly but this is not true. Defendant Clayton did not drive recklessly. Neither defendant Clayton, nor defendant Schend heard the plaintiff complain about defendant Clayton's driving. If defendant Clayton had driven recklessly, defendant Schend would have ordered him to stop and later reported the reckless

driving to superior officers. Put simply, the facts of this case and the applicable law do not support the plaintiff's claims.

A. The Defendants Did Not Violate The Plaintiff's Eighth Amendment Rights.

The Eighth Amendment to the United States Constitution prohibits the federal government from imposing "cruel and unusual punishments. As applied to the states through the Fourteenth Amendment, prison and jail officials are required to "take reasonable measures to guarantee the safety of the inmates." *Farmer v. Brennan, 511 U.S. 825, 832, 114 S. Ct. 1970, 1976, 128 L.Ed.2d 811 (1994).* To prove a violation of the Eighth Amendment, a plaintiff must prove both that a defendant acted with deliberate indifference to the plaintiff's needs and that the actions were serious enough to rise to the level of a constitutional violation. *Wilson v. Seiter, 501 U.S. 294, 298-302, 111 S. Ct. 2321, 2324-27, 115 L.Ed.2d 271 (1991).*

Proving deliberate indifference to a plaintiff's needs requires a plaintiff to show that he was exposed to a substantial risk of serious harm, that a defendant knew of the risk, and that the defendant proceeded despite this knowledge. *Farmer v. Brennan 511 U.S. 825, 835 114 S. Ct. 1970, 1977-78, 128 L.Ed.2d 811 (1994).* This requires more than negligent action on the part of a defendant. Instead, a plaintiff must prove that a defendant's actions are "the equivalent of criminal recklessness." *Fisher v. Lovejoy, 414 F.3d 659, 662 (7th Cir. 2005).* In this case, the plaintiff cannot prove a violation of his Eighth Amendment rights.

1. Transporting an Incarcerated Person in a Van Without The Use of Seatbelts Does Not Violate The Eighth Amendment.

In general, incarcerated persons have no constitutional right to seatbelts in a transport vehicle. A failure to provide seatbelts or to secure an incarcerated person using available seatbelts does not violate the Eighth Amendment by creating a substantial risk of serious harm. *Spencer v. Knapheide Truck Equip. Co., 183 F.3d 902, 906 (8th Cir. 1999).* See also *Smith v.*

Secretary for the Dep't of Corrections, 252 Fed. Appx 301, 303-04 (11th Cir. 2007) and *Dexter v. Form Motor Co., 92 Fed. Appx. 637, 643 (10th Cir. 2004).*

In this case, the van used for transporting the plaintiff was equipped with lap seatbelts for use by the transported inmates. [Clayton Aff., ¶ 10; Schend Aff., ¶7]. The plaintiff was not prevented from applying a seatbelt. [Clayton Aff. ¶ 18; Schend Aff., ¶ 10]. Other inmates being transported in the van have successfully used the seatbelts. [Clayton Aff., ¶ 19; Schend Aff., ¶] 10.

In addition, Winnebago County policy prohibits the securing of transported inmates to a vehicle. [Clayton Aff., ¶ 20, Ex. F]. Further, the training provided to the defendants was that they should not closely interact with an agitated inmate by reaching across the inmate's waist to secure a seatbelt. [Clayton Aff., ¶¶ 21, 22]. This is to prevent the placing of law enforcement officers into a vulnerable position. [Clayton Aff., ¶ 22; Schend Aff., ¶ 9]. The plaintiff in this case was agitated and initially refused to enter the transport van. [Clayton Aff., ¶¶ 22]. As a result, the defendants' training advised against applying a seatbelt. The failure to secure the plaintiff in a provided seatbelt does not constitute a substantial risk of serious harm. The plaintiff cannot prove the objective component of an Eighth Amendment violation.

Finally, there is no evidence that the defendants intended to harm the plaintiff. In fact, when the plaintiff complained of injury, the defendants drove to a nearby prison facility where medical treatment was offered to the plaintiff. The plaintiff refused this medical treatment.

2. Defendant Clayton Did Not Act With Deliberate Indifference To A Substantial Risk of Serious Harm to the Plaintiff.

The facts of this case demonstrate that defendant Clayton did not act with deliberate indifference toward the plaintiff. As a result, the plaintiff's claims against defendant Clayton fail as a matter of law.

Courts have held that the refusal to secure a seatbelt of an inmate shackled in a manner which prevented the inmate from applying the seatbelt, coupled with reckless driving can constitute deliberate indifference toward a plaintiff. Brown v. Fortner, 518 F.3d 552, 559 (8th Cir. 2008).

In this case, the van in which the plaintiff was transported was equipped with lap seatbelts. The plaintiff was shackled in a manner which permitted him to use the seatbelt. Other inmates have successfully used the seatbelts in the past despite being shackled the same way.

The plaintiff claims that defendant Clayton drove recklessly. The facts of this case do not support this claim. Defendant Schend did not observe defendant Clayton driving in a reckless manner. In fact, if he had observed reckless driving, defendant Schend would have ordered it to stop and replaced defendant Clayton as the driver. Defendant Schend would also have reported the reckless driving by defendant Clayton to his superiors. In addition, the plaintiff had no observable injury and refused medical treatment when the defendants stopped the van at the Waupun Correctional Institute after he complained of injury. Defendant Clayton did not drive recklessly. The plaintiff had access to a seatbelt and could have used it. Defendant Clayton was not deliberately indifferent to a substantial risk of injury to the plaintiff.

3. Defendant Schend Did Not Act With Deliberate Indifference To A Substantial Risk of Serious Harm to the Plaintiff.

Defendant Schend did not drive the van in which the plaintiff was transported. [Schend Aff., ¶18]. He did not drive recklessly. There is no causal connection between the plaintiff's claimed constitutional deprivation and the actions of Defendant Schend. *Wolf-Lillie v. Sonquist, 699 F.2d 864, 869 (7th Cir. 1983).* The plaintiff cannot demonstrate that Defendant Schend acted with deliberate indifference by driving recklessly. *Minix v. Canarecci, 597 F.3d 824, 833 (7th Cir. 2010).*

Likewise, the facts demonstrate that defendant Schend did not observe any reckless driving on the part of defendant Clayton. [Schend Aff., ¶ 26]. In addition, if defendant Schend had observed reckless driving, he would have ordered it to stop and would have reported it to his superior officers. [Schend Aff., ¶¶27, 28, 29, 30].

Further, when the plaintiff complained of injury, the defendants stopped and offered medical treatment to the plaintiff. [Clayton Aff., ¶¶ 32, 40; Schend Aff., ¶¶ 21, 23]. The plaintiff refused medical treatment.

B. Qualified Immunity.

The doctrine of qualified immunity protects a government employee from damages liability if the employee's actions did not violate a "clearly established statutory or constitutional right of which a reasonable person would have known." *Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 396 (1982).* Qualified immunity will protect a government employee if he or she "reasonably believes that his or her conduct complies with the law." *Pearson v. Callahan, 555 U.S. 223, 244, 129 S.Ct. 808, 823, 172 L.Ed.2d 565 (2009).*

The defendants acknowledge that the Court will look first at the plaintiff's version of the events to determine whether there is a constitutional violation. In this case, the van was equipped with seatbelts. The defendants did not secure the plaintiff in a seatbelt because he was agitated and their training indicated that doing so could jeopardize their safety. Even so, the plaintiff was shackled in a way which would permit him to use the provided seatbelt and numerous other inmates had successfully used the provided seatbelts.

Courts have routinely held that the failure to apply seatbelts to transported inmates does not create as substantial risk of serious harm to the inmate. *Spencer v. Knapheide Truck Equip. Co., 183 F.3d 902, 906 (8th Cir. 1999).* It is only where there is a refusal to apply a seatbelt combined with reckless driving that leads to a potential violation of the Eighth Amendment.

In this case, defendants Clayton and Schend are entitled to qualified immunity. The van in which the plaintiff was transported was equipped with seatbelts. The plaintiff had the option to use the seatbelt and was not prevented from using it. Although the plaintiff claims that defendant Clayton drove recklessly, defendant Schend did not see reckless driving and would have reported it to his superiors if it had occurred.

Under the facts of this case, the defendants are entitled to qualified immunity. Both defendant Clayton and defendant Schend reasonably believed that their actions in transporting the plaintiff to the Winnebago County Jail were constitutional.

CONCLUSION

The plaintiff's claims are not supported by the facts of this case. The affidavits demonstrate transported in a vehicle equipped with seatbelts for his voluntary use and that he was not prevented from using them. The facts further demonstrate that defendant Clayton did not drive recklessly and that defendant Schend would have not only stopped it if it had occurred but would also have reported the reckless driving to his superiors. Under the facts of this case, neither defendant was deliberately indifferent to a substantial risk of harm to the plaintiff. The defendants are entitled to judgment as a matter of law. The plaintiff's claims should be dismissed.

Dated: May 10, 2019.

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