

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

LAMONTE A. EALY,

Plaintiff,

v.

Case No. 23-CV-1650

GRACE BUSTLE,

Defendant.

DECISION AND ORDER

Plaintiff Lamonte A. Ealy, who is incarcerated and representing himself, brings this lawsuit under 42 U.S.C. § 1983. Ealy was allowed to proceed against defendant Grace Bustle pursuant to the Eighth Amendment because Bustle allegedly failed to protect Ealy from an attack by another prisoner. The parties have consented to the jurisdiction of a magistrate judge. (ECF Nos. 4, 27.)

PRELIMINARY MATTER

On October 8, 2025, Ealy filed a sur-reply brief, though he did not move for leave from the court to do so. (ECF No. 66.) Bustle did not move to strike the sur-reply. Whether to permit a party to file a sur-reply brief is a question within the court's discretion. "The decision to permit the filing of a surreply is purely discretionary and should generally be allowed only for valid reasons, such as when the movant raises new arguments in a reply brief." *Merax-Camacho v. U.S.*, 417 F. App'x 558, 559 (7th Cir. 2011) (citing *Schmidt v. Eagle Waste & Recycling, Inc.*, 599 F.3d 626, 631 n. 2 (7th Cir.

2010)). “In some instances, allowing a filing of a surreply ‘vouchsafes the aggrieved party’s right to be heard and provides the court with the information necessary to make an informed decision.” *Univ. Healthsystem Consortium v. United Health Group, Inc.*, 68 F. Supp. 3d 917, 922 (N.D. Ill. 2014) (quoting *In re Sulfuric Acid Antitrust Litg.*, 231 F.R.D. 320, 329 (N.D. Ill. 2005)). The court will allow Ealy’s sur-reply. It adds clarity to his response materials. The court will consider the sur-reply where appropriate when analyzing Bustle’s motion for summary judgment.

FACTS

At all times relevant Ealy was incarcerated at Waupun Correctional Institution. (ECF No. 55, ¶ 1.) Bustle worked for the Wisconsin Department of Corrections as a correctional officer at Stanley Correctional Institution, but from November 2020 to February 2021 she was assigned to work at Waupun because Waupun was experiencing a staff shortage. (*Id.*, ¶¶ 2-3.)

Ealy asserts that on December 8, 2020, while he was housed in the Northwest Cell Hall, he stopped Bustle and told her that “he wanted her to watch him as he waited in his cell for his cellmate to return because inmate [Brushae] Brown threaten[ed] to assault Ealy when the doors open[ed] for showers.” (ECF No. 13 at 2.)¹ Ealy states that Bustle responded, “You’re coming to a woman to protect yourself from another man? Are you kidding me? Really, you need to grow a pair.” (*Id.* at 2-3.) Ealy explained that he was up for a transfer to a medium-security institution and did not want to jeopardize

¹ Ealy invokes 28 U.S.C. § 1746 in his complaint, which is enough to convert the amended complaint into an affidavit for purposes of summary judgment. *See Beal v. Beller*, 847 F.3d 897, 901 (7th Cir. 2017); *Owens v. Hinsley*, 635 F.3d 950, 954–55 (7th Cir. 2011).

the transfer by being involved in a fight. (*Id.* at 3.) He also explained that, if he did not defend himself, he was concerned he'd get seriously injured. (*Id.*) Bustle walked off and did not take any measures to ensure Ealy's safety. (*Id.*) She also left the cell hall unattended. (*Id.*)

Bustle states that on December 8, 2020, she "was assigned to monitor inmate movement during shower time in the Northwest Cell Hall." (ECF No. 55, ¶ 24.) She was not assigned to a particular area, but instead "was responsible for monitoring all movement on all four tiers of the Northwest Cell Hall." (*Id.*, ¶ 26.) She notes that the cell hall is large, and on that date "there were only three or four staff members assigned to monitor the entire cell hall." (*Id.*) This resulted in Bustle having to "continually move to attempt to monitor all inmates." (*Id.*) One of the duties of monitoring the cell hall during shower time "was to assist in securing the cell doors" after prisoners came back from the showers. (*Id.*, ¶ 27.) However, because prisoners would gradually return from the showers over a two-hour period, Bustle usually could not immediately secure all cell doors, so prisoners were "informed that they were to secure their cell door upon return from showers." (*Id.*, ¶¶ 28-29.)

Bustle asserts that "Ealy did not inform Bustle that he was in imminent danger, had been threatened, or even that he had any apprehension/fear or tension concerning another inmate." (ECF No. 55, ¶ 31.) She also denies stating, "You're coming to a woman to protect yourself from another man? Are you kidding me? Really, you need to grow a pair." (*Id.*, ¶ 32.) However, Bustle acknowledges that she spoke to Ealy at his cell on December 8, 2020, at approximately 2:46 p.m. (*Id.*, ¶ 30.)

Bustle relies on the surveillance video (which contains two separate views of the housing tier but no audio) to supplement her recollection of the events that occurred after she talked to Ealy. (ECF No. 60.) Ealy generally does not dispute Bustle's description or the contents of the video. After Bustle finished speaking with Ealy, she moved on to another tier, and shortly thereafter non-defendant Officer Abigail Gottschalk walked down Ealy's tier and noticed that Ealy and other prisoners "were leaning out of their cells." (ECF No. 55, ¶ 33.) Gottschalk "motioned to Ealy and other inmates who were leaning out of their cells and directed them to return to their cells." (*Id.*)

Shortly thereafter Brown entered the tier, returning from the showers back to his cell. (ECF No. 55, ¶ 34.) However, before he returned to his cell, Brown "approached Ealy's cell, reached into his waistband, and pulled out what appeared to be a shank. Brown then feigned toward Ealy's cell and then walked to and stood outside of his own cell." (*Id.*) It is unclear in the video whether Brown is holding a shank. (ECF No. 60 at 2:47:50-2:48:10.) Meanwhile, Ealy kept popping his head out of his cell to look around, suggesting that he had not, in fact, secured his cell door. (ECF No. 55, ¶ 36.) Around that time, non-defendant Officer Michael Maitland entered the tier and approached another prisoner's cell near Ealy's. (*Id.* ¶¶ 35, 37.) While Maitland was at that cell, "Brown left his cell and walked toward Ealy's cell," where he exchanged words with Ealy. (*Id.*, ¶ 38.) Maitland then walked further down the tier, and Brown returned to his cell. (*Id.*, ¶ 39.)

Approximately 10 minutes after Bustle had talked with Ealy, at around 2:59 p.m., Brown again left his cell and went to Ealy's cell, where he slid open Ealy's cell door "and stood in front of Ealy's door for less than 30 seconds before walking away." (ECF No. 55, ¶ 44.) Two minutes later, Gottschalk twice walked past Ealy's cell, but Ealy did not stop her or say anything to her. (*Id.*, ¶ 45.)

At 3:03 p.m. "Brown walked to Ealy's cell door, slid the cell door open, and entered the cell." (ECF No. 55, ¶ 46.) "Brown appeared to be attempting to strike Ealy." (*Id.*) Brown's cellmate, Tommie Hollis, came to Ealy's cell to watch them fight, and then "suddenly rushed back to his cell." (*Id.*, ¶ 47.) Bustle states Hollis soon returned with a shank in his hand and momentarily entered Ealy's cell; however, the shank is not easily visible on the video. (*Id.*, ¶ 48; ECF No. 60 at 3:03:30-3:04:30)

At the same time, Bustle entered the tier, and another prisoner approached her, which she believes "was an attempt to block and distract Bustle from observing Ealy and Brown fighting." (ECF No. 55, ¶ 49.) Hollis also approached Bustle and spoke with her in an attempt to distract her. (*Id.*, ¶¶ 50-51.) Bustle states the video showed Hollis with a shank, but at the time she did not notice the shank. (*Id.*, ¶ 52.) Bustle then noticed that Ealy and Brown had been fighting in Ealy's cell and tried to use her radio to call for assistance, but her radio was broken. (*Id.*, ¶ 53.) She then yelled for the prisoners to return to their cells, which also would alert the other officers on the tier that there was a situation. (*Id.*).

Brown exited Ealy's cell with blood on his face and shirt. (ECF No. 55, ¶ 55.) Ealy, who was now shirtless, leaned out of his cell and spoke to Bustle. (*Id.*, ¶ 57.) As other

officers entered the tier, Bustle went to check on Brown first, because she had noticed the blood on his face and shirt. (*Id.*, ¶ 59.) After speaking with Brown and Hollis, Bustle and another officer went to speak with Ealy. (*Id.*, ¶ 61.)

At approximately 5:45 p.m. on December 8, 2020, Nurse Jennifer Kacyon examined Ealy. (ECF No. 55, ¶ 66.) Ealy states that he sustained a “direct punch” to his left eye, which resulted in the eye becoming “puffy” and “completely closed”. (ECF No. 62, ¶ 67.) Ealy asserts his eye was also “bloodshot red” and sensitive to both touch and light. (*Id.*, ¶ 72.) Bustle characterizes Ealy’s injury as “mild swelling to his left eye”. (ECF No. 55, ¶ 66.) She also asserts that Nurse Kacyon noted his eye was open and that Ealy “denied vision changes.” (*Id.*, ¶ 67.) Ealy was given acetaminophen and ice to relieve his pain. (*Id.*, ¶¶ 69, 70.)

Later on the evening of December 8 non-defendant Nurse Ann York saw Ealy for a follow-up exam. (ECF No. 55, ¶ 71.) York noted that Ealy’s eye “was swelling without redness or bleeding [and] Ealy denied pain or vision changes.” (*Id.*, ¶ 72.) Ealy disputes this, stating his eye was swollen shut. (ECF No. 62, ¶ 72.)

On the next day, December 9, 2020, non-defendant Nurse Dixie Berres examined Ealy and “noted that Ealy’s eyelid was swollen, red, and bloodshot.” (ECF No. 55, ¶¶ 73-74.) She further noted that “Ealy’s neurological check was within normal limits.” (*Id.*, ¶ 74.)

On December 15, 2020, Ealy submitted a Health Service Request (HSR) to the Health Services Unit (HSU) complaining that his left index finger and “right knuckle” were fractured. (ECF No. 55, ¶ 75.) He was scheduled for an appointment. (*Id.*)

On December 17, 2020, non-defendant Advanced Practice Nurse Prescriber (APNP) Mary Moore examined Ealy for elevated blood pressure, and Ealy did not mention issues with his eye or hands. (ECF No. 55, ¶¶ 77-78.) In fact, it is undisputed that Ealy did not complain about the eye after December 9, 2020. (*Id.*, ¶ 85.)

On December 20, 2020, Ealy submitted another HSR asking to be seen for his left index finger and right middle knuckles and because he had sore, hoarse vocal chords. (ECF No. 55, ¶ 79.) On December 29, 2020, non-defendant Nurse Robert Ahlborg examined Ealy and his hands. (ECF No. 55, ¶ 80.) Ealy explained that the pain “stemmed from the altercation on December 8.” (*Id.*, ¶ 81.) An x-ray was ordered. (*Id.*, ¶ 82.) On January 4, 2021, Ealy’s hand was x-rayed and the x-ray “showed no acute osseous abnormality, meaning there was no significant bone injury.” (*Id.*, ¶ 83.) After this appointment, Ealy did not complain further regarding injuries stemming from the December 8 incident. (*Id.*, ¶¶ 84-87.)

SUMMARY JUDGMENT STANDARD

The court shall grant summary judgment if the movant shows 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); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). “Material facts” are those under the applicable substantive law that “might affect the outcome of the suit.” *See Anderson*, 477 U.S. at 248. A dispute over a “material fact” is “genuine” if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.*

In evaluating a motion for summary judgment, the court must view all inferences drawn from the underlying facts in the light most favorable to the nonmovant. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). However, when the nonmovant is the party with the ultimate burden of proof at trial, that party retains its burden of producing evidence which would support a reasonable jury verdict. *Celotex Corp.*, 477 U.S. at 324. Evidence relied upon must be of a type that would be admissible at trial. *See Gunville v. Walker*, 583 F.3d 979, 985 (7th Cir. 2009). To survive summary judgment a party cannot just rely on his pleadings but “must set forth specific facts showing that there is a genuine issue for trial.” *Anderson*, 477 U.S. at 248. “In short, ‘summary judgment is appropriate if, on the record as a whole, a rational trier of fact could not find for the non-moving party.’” *Durkin v. Equifax Check Servs., Inc.*, 406 F.3d 410, 414 (7th Cir. 2005) (citing *Turner v. J.V.D.B. & Assoc., Inc.*, 330 F.3d 991, 994 (7th Cir. 2003)).

ANALYSIS

Ealy claims that Bustle violated his constitutional rights when she failed to protect him after he told her that Brown was going to attack him. “Because officials have taken away virtually all of a prisoner’s ability to protect himself, the Constitution imposes on officials the duty to protect those in their charge from harm.” *Dale v. Poston*, 548 F.3d 563, 569 (7th Cir. 2008). To demonstrate an Eighth Amendment claim against an official for failing to protect him, a plaintiff must allege “the official knows of and disregards an excessive risk of safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must

also draw the inference.” *Id.* Additionally, “the plaintiff must prove that the defendant’s deliberate indifferent actually *caused* his injury.” *Hunter v. Mueske*, 73 F. 4th 561, 565 (7th Cir. 2023) (citing *Roe v. Elyea*, 631 F.3d 843, 864 (7th Cir. 2011) (emphasis in original)).

A question of material fact exists as to whether Ealy told Bustle that Brown was going to attack him upon returning from the showers. Ealy states that he stopped Bustle outside of his cell a little more than 15 minutes before Brown’s attack, told her of the imminent threat, and she refused to do anything. Bustle denies ever being told about the potential for an attack. Taking the facts in the light most favorable to Ealy, a reasonable factfinder could conclude that Bustle knew of and disregarded an excessive risk to Ealy’s safety. The fact that the prison was understaffed and Bustle had to keep conducting her rounds does not, as a matter of law, excuse Bustle’s obligation to prevent an imminent attack.

Bustle argues that Ealy contributed to causing the excessive risk by not securing his cell door or telling other guards who passed by Ealy’s cell of the danger. However, Bustle acknowledges that it was part of her job to secure the cell doors after the showers. When Ealy told her of the threat, she could have secured his door. The fact that Ealy did not tell other guards does not excuse Bustle from acting on the threat. At most, Ealy failing to report the risk to other guards creates a credibility question as to whether he actually informed Bustle of the threat, which is best left to be resolved by a jury.

Bustle also argues that Ealy engaged in mutual combat with Brown, but there is no clear evidence from the video or either party’s proposed findings of fact of what Ealy’s

role was in the fight. Based on the evidence in the record, a reasonable jury could conclude that Ealy acted in self-defense or even did not fight back. There is evidence that Brown's shirt and face was bloody, but it is unclear why. There is also evidence that Ealy hurt his hand in the fight, but, again, it is unclear what caused that injury. As such, Ealy's role in the fight is a question of fact best resolved by a jury.

There is also a question of material fact as to whether Ealy suffered serious harm as a result of Brown's attack. Bustle describes the injury as mild and minor swelling that did not require much medical care. Ealy asserts that his eye was swollen shut for a few weeks and he suffered lingering pain. The medical records submitted by Bustle do not establish, as a matter of law, that Ealy did not suffer a meaningful injury.

Bustle argues that, even if the court finds that questions of material fact exist, the court should nevertheless grant summary judgment in her favor because she is entitled to qualified immunity for claims brought under § 1983. To determine whether qualified immunity applies, the court must consider "(1) whether the defendants violated a constitutional right, and (2) whether the constitutional right was clearly established." *Broadfield v. McGrath*, 737 F. App'x 773, 775 (7th Cir. 2018).

The law as it existed in December 2020, it was well-established that prison officials have a duty to prevent one inmate from attacking another and that doing nothing violates the Eighth Amendment. *See Hunter* 73 F.4th at 566 ("Obviously, doing absolutely nothing about a known serious risk constitutes deliberate indifference"); *Gidarisighn v. Pollard*, 571 Fed. Appx. 467 (7th Cir. 2014). Thus, Bustle is not entitled to qualified immunity.

CONCLUSION

For the foregoing reasons, Bustle's motion for summary judgment is denied. The court will set a status conference at a later date to discuss next steps.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the defendants' motion for summary judgment (ECF No. 53) is **DENIED**.

Dated at Milwaukee, Wisconsin this 23rd day of January, 2026.

BY THE COURT

A handwritten signature in black ink that reads "William E. Duffin". The signature is written in a cursive style and is positioned above a horizontal line.

WILLIAM E. DUFFIN
United States Magistrate Judge