

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

SHAWN EUBANKS,

Plaintiff,

v.

Case No. 22-C-1030

JACOB GRIPENTROG,

Defendant.

DECISION AND ORDER

Plaintiff Shawn Eubanks, a prisoner at Waupun Correctional Institution who is representing himself, is proceeding on an Eighth Amendment claim against Defendant Jacob Gripentrog based on allegations that Gripentrog punched Eubanks in the groin through the trap in Eubank's cell door. On June 16, 2023, Eubanks filed a motion for summary judgment. Gripentrog filed his own motion for summary judgment on July 19, 2023. For the reasons explained in this decision, the Court will deny the parties' motions.

BACKGROUND

At the relevant time, Eubanks was an inmate at the Waupun Correctional Institution, where Gripentrog was employed as a correctional officer. On September 10, 2021, Gripentrog was supervising another officer as he was handing out medication when Gripentrog noticed that Eubank's cell window was covered with a piece of paper. Gripentrog instructed Eubanks to take the paper off his window, but Eubanks refused, stating that he was about to wash up. According to Eubanks, Gripentrog again told him to take down the paper, but Eubanks did not respond. Eubanks asserts that, "[t]he next moment defendant Gripentrog opened plaintiff's cell's trap door and punched plaintiff once in the penis and then tried to grab plaintiff's genitals." Eubanks asserts

that he was in excruciating pain and that he experienced trauma and swelling in his groin area, particularly in his testicles. Eubanks asserts that he pushed his emergency medical button, but neither security nor medical staff responded. He states that, later that day, he submitted a health services request concerning his injuries and contacted the warden. Eubanks further asserts that he requested to make a Prison Rape Elimination Act call, but Gripentrog told him no. Finally, Eubanks states that, later during meal pass, he told Gripentrog that he knew he had punched Eubanks in the penis, and Eubanks asked for an inmate complaint form. Eubanks refused to let Gripentrog open his trap to deliver his meal, saying, “I don’t want my trap opened in front of my victimizer.” [Dkt. No. 37 at ¶¶1-33.](#)

According to Eubanks’ medical records, on September 15, 2021, a nurse spoke to Eubanks at his cell door to follow up on his complaint that he had been punched in the groin by an officer. The provider note indicates that Eubanks said he was doing ok and was a little sore in his genitals. The nurse told him to use his ice bag as needed and to let health services know if he had any further issues. About two months later, his records show complaints about right groin and testicle pain, which Eubanks said he had been experiencing since the incident with Gripentrog. An ultrasound of his pelvis and scrotum was done, and he was given an antibiotic for a possible infection. In February 2022, Eubanks again complained of testicular pain and asserted that the pain was a result of the incident with Gripentrog. The progress note referred to a recent ultrasound that had revealed moderate swelling in both testicles. The provider ordered a CT scan of Eubanks’ scrotum, abdomen, and pelvis. In May 2022, a large amount of blood was noted on a urine dipstick with Eubanks reporting that he had been experiencing intermittent abdominal and testicular pain since being punched the prior September. Neither party provided the results of the ordered CT scan, and no provider appears to have diagnosed the cause of Eubanks’ symptoms. [Dkt. No. 25-2 at 25-28.](#)

Unsurprisingly, Gripentrog has a very different recollection of what occurred. According to Gripentrog, he knew Eubanks was in segregation because of a pending conduct report for assault of a staff member, so after Eubanks refused to remove the paper from his window, Gripentrog walked away to avoid escalating the situation. Gripentrog asserts that he returned to Eubanks' cell about ten minutes later. He states that the cell window was still covered so he again told Eubanks to remove the paper, but Eubanks did not respond. Gripentrog asserts that he unlocked the trap to check on Eubanks, at which time he saw Eubanks laying in his bed, apparently sleeping. According to Gripentrog, after determining that Eubanks was not a threat to himself or others, Gripentrog reached through the trap and pulled the paper off the window. During an internal investigation, Gripentrog acknowledged that policy required that he contact a sergeant after Eubanks refused to remove the paper, but he said it is not uncommon for staff members to handle the situation themselves by pulling the paper down. He said doing that is easier than trying to get an inmate to come to the door and remove the paper. Gripentrog states that once he grabbed the paper, he let it fall to the ground inside the cell, locked the trap, and walked away. He explains that Eubanks' bed was about ten feet away from the trap and that he would not have reached into the cell if Eubanks had been standing nearby. Gripentrog clarifies that at no point did he have any physical contact with Eubanks. [Dkt. No. 44 at ¶¶10-13, 16-23](#); [Dkt. No. 25-2 at 16-17](#).

LEGAL STANDARD

Summary judgment is appropriate when the moving party shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law. [Fed. R. Civ. P. 56\(a\)](#). In deciding a motion for summary judgment, the Court must view the evidence and draw all reasonable inferences in the light most favorable to the non-moving party. *Johnson v. Advocate Health & Hosps. Corp.*, [892 F.3d 887, 893](#) (7th Cir. 2018) (citing *Parker v. Four Seasons Hotels, Ltd.*, [845 F.3d 807, 812](#) (7th Cir. 2017)). In response to a properly supported

motion for summary judgment, the party opposing the motion must “submit evidentiary materials that set forth specific facts showing that there is a genuine issue for trial.” *Siegel v. Shell Oil Co.*, [612 F.3d 932, 937](#) (7th Cir. 2010) (citations omitted). “The nonmoving party must do more than simply show that there is some metaphysical doubt as to the material facts.” *Id.* Summary judgment is properly entered against a party “who fails to make a showing to establish the existence of an element essential to the party’s case, and on which that party will bear the burden of proof at trial.” *Austin v. Walgreen Co.*, [885 F.3d 1085, 1087-88](#) (7th Cir. 2018) (citing *Celotex Corp. v. Catrett*, [477 U.S. 317, 322](#) (1986)).

ANALYSIS

“[T]he unnecessary and wanton infliction of pain . . . constitutes cruel and unusual punishment forbidden by the Eighth Amendment.” *Hudson v. McMillian*, [503 U.S. 1, 5](#) (1992) (quoting *Whitley v. Albers*, [475 U.S. 312, 319](#) (1986)). An Eighth Amendment claim consists of an objective and subjective component. *Farmer v. Brennan*, [511 U.S. 825, 834](#) (1994). In the context of an excessive force claim, the plaintiff must show both that (1) “the alleged wrongdoing was objectively ‘harmful enough’ to establish a constitutional violation,” and (2) “‘the officials act[ed] with a sufficiently culpable state of mind.’” *Hudson*, [503 U.S. at 8](#) (citations omitted). The “central question” when evaluating whether force used against a prisoner is excessive is “whether force was applied in a good-faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.” *Fillmore v. Page*, [358 F.3d 496, 503](#) (7th Cir. 2004) (quoting *Hudson*, [503 U.S. at 6](#)).

The parties sharply dispute what happened. Eubanks asserts that Gripentrog reached through his trap to forcefully punch him in the groin and then grabbed at his genitals, causing him significant pain and long-lasting injury. Gripentrog asserts that Eubanks was laying in his bed, ten feet away, when he reached through the trap to remove the paper covering Eubanks’ window. If

the parties' conflicting versions were the only evidence, this case would survive summary judgment because disputes of material fact abound. But, in addition to the parties' sworn statements, Gripentrog has filed the range surveillance video, which shows the brief six seconds during which he reached through Eubanks' trap.

Nearly two decades ago, the Supreme Court held that, "[w]hen 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). Much more recently, the Seventh Circuit has warned that video evidence "can eviscerate a factual dispute only when the video is so definitive that there could be no reasonable disagreement about what the video depicts." *Kailin v. Vill. of Gurnee*, 77 F.4th 476, 481 (7th Cir. 2023) (citations omitted). The appellate court noted, "[i]t should be considered a rare case where video evidence leaves no room for interpretation by a fact finder." *Id.* (citing cases).

This is not one of those rare cases. The video begins with Gripentrog following behind another officer who is distributing medication from a cart. Gripentrog leans against the wall, observing the other officer. As the other officer moves away from Eubanks' cell, Gripentrog appears to say something and then walks towards Eubanks' door. Gripentrog then unlocks the trap and bends over sideways to look through the trap. He quickly thrusts his left hand through the trap, pulls out his arm, and then again looks through the trap. He then reaches through the trap, up to about his shoulder, and turns his body to the right as he appears to reach for something. Gripentrog then pulls his arm out of the trap, closes and locks the trap, and walks away.

The video shows only Gripentrog's actions; it does not show what is happening inside Eubanks' cell. Both Gripentrog and Eubanks insist that the video confirms their version of events. Gripentrog asserts that the video obviously shows him reaching up the door to remove the paper,

and Eubanks asserts that the video obviously shows Gripentrog punching him in the groin and then trying to grab him. But, despite the parties' characterizations of the video, the Court concludes that the video is not "so definitive that there could be no reasonable disagreement about what the video depicts." *Id.* Without unambiguous video evidence, the Court is left with the parties' conflicting versions of what happened, which means neither party is entitled to summary judgment.

Nor is Gripentrog entitled to qualified immunity, which protects government officials from liability when their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *See D.C. v. Wesby*, [583 U.S. 48, 63](#) (2018). Punching an inmate in the groin through his trap door because the inmate does not comply with an order cannot be characterized as a good-faith effort to maintain or restore discipline. Thus, if a jury were to credit Eubanks' version, Gripentrog's alleged actions would clearly violate Eubanks' constitutional rights. Because a jury must make factual determinations regarding Gripentrog's actions, Gripentrog is not entitled to qualified immunity.

NEXT STEPS

Eubanks' claim will proceed to trial. Given the complexity of trying a case before a jury, including offering a coherent opening statement and closing argument, presenting and examining witnesses, and locating and introducing evidence, the Court concludes that Eubanks lacks the capacity to represent himself in the next stage of litigation. Accordingly, the Court will make efforts to recruit a volunteer lawyer to represent him. The demand for volunteer lawyers is high, but the supply is low. Few lawyers have the time, ability, or experience to volunteer for cases such as these. The Court encourages Eubanks to be patient as it makes efforts to recruit a lawyer to represent him. The process may take some time. The Court will promptly notify Eubanks in the event a lawyer volunteers to represent him. In the meantime, the Court encourages the parties to explore whether settlement is possible.

CONCLUSION

For these reasons, Eubanks' motion for summary judgment ([Dkt. No. 28](#)) is **DENIED**, and Defendant's motion for summary judgment ([Dkt. No. 34](#)) is **DENIED**.

SO ORDERED at Green Bay, Wisconsin this 18th day of October, 2023.

s/ William C. Griesbach

William C. Griesbach
United States District Judge