UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

DAVID HOWARD, Plaintiff, v. BRANDON WEDDELL and JOHN MILLER, Defendants.	)	No. 1:23-cv-00263-RLY-TAB

ENTRY DENYING SUMMARY JUDGMENT MOTIONS

Plaintiff David Howard brings claims under 42 U.S.C. § 1983 against two officers at Pendleton Correctional Facility, Defendants Brandon Weddell and John Miller. He alleges Defendants violated the First and Eighth Amendments by using excessive force against him and retaliating against him for filing grievances and lawsuits. Howard and Miller now move for summary judgment. (Filing Nos. 55, 60). For the reasons explained below, the court denies both motions.

I. Background

A. The Parties

Howard is in the custody of the Indiana Department of Corrections and housed at Pendleton Correctional Facility. (Filing No. 63, Pl. Decl. ¶ 2). At all times relevant to this case, Weddell was a correctional officer at Pendleton, and Miller was a disciplinary hearing board officer at Pendleton. (Filing No. 75-1, Weddell Decl. ¶ 2; Filing No. 75-2, Miller Decl. ¶ 2).

In 2020, Howard filed a federal lawsuit regarding food service practices at Pendleton. (Pl. Decl. ¶ 4; *Howard v. Miller*, No. 1:20-cv-00352-TWP-MJD (S.D. Ind.)). In that case, between 2021 and 2024, Howard filed dozens of letters to Chief Judge Tanya Pratt "complaining about the conditions at Pendleton" and alleging retaliation against him. (Pl. Decl. ¶ 4; *see, e.g.*, *Howard*, No. 1:20-cv-00352, Filing Nos. 68, 70, 73–77, 79–87, 89). In 2020, Howard also filed a federal lawsuit alleging officers at Pendleton confiscated his legal mail. (Filing No. 55-1, Pl. Dep. at 23–24; *see Howard v. Zatecky*, No. 1:20-cv-01734-JPH-DML (S.D. Ind.)).[1]

Additionally, between January 12, 2022, and May 5, 2022, Howard filed a series of grievances against officers at Pendleton. (Pl. Decl. ¶ 3; *see* Filing No. 61-1, Pl.'s Exhibits at 1–8 (Ex. 1, 1-A, 1-B, 1-C)).[2]

B. The Handcuff Incident

On May 9, 2022, Howard and Weddell got into an argument regarding how Weddell was opening cell doors on Howard's range. (*See* Pl. Dep. at 8–9, 12; Filing No. 55-2, Conduct Reports at 3). Howard and Weddell exchanged words, and Weddell ordered Howard to cuff up. (Pl. Dep. at 8–9; Filing No. 75-5, Use of Force Report at 1; *see also* Filing Nos. 56 & 64, Video Footage). Howard and Weddell tell strikingly different stories of this incident.

[1] Howard has filed other federal lawsuits. (*See Owens v. Carter*, No. 1:22-cv-01613-JPH-KMB (S.D. Ind. Aug. 15, 2022) (alleging inmates at Pendleton are exposed to unsafe contaminated water); *Howard v. Dauss*, No. 1:23-cv-01267-JPH-KMB (S.D. Ind. July 20, 2023) (same)).

[2] Throughout this Entry, the court uses ECF filing numbers and ECF page numbers in its citations. To aid understanding, the court also includes Howard's exhibit numbers.

1. Howard's Evidence

According to Howard, Weddell opened other cell doors on Howard's range but not his, so Howard approached Weddell and said, "I know you're not deaf or dumb. Can you, please, open my cell?" (Pl. Dep. at 8, 12). Weddell responded, "Take your smart ass in front of your cell and when I decide to open your cell I'll let you in." (*Id.* at 9). Howard responded, "This is why guys turn up and you have conflict and you have situations occur because [of] that attitude." (*Id.* at 9, 50–51).

Weddell then "got irate" and ordered Howard "to cuff up." (*Id.* at 9). Howard asserts he "never resisted" Weddell's order to cuff up and "complied" with the order throughout the incident. (Pl. Decl. ¶ 15; *see, e.g.*, Pl. Dep. at 10, 14). Weddell put a handcuff on Howard's right wrist "so tight that it caused extreme pain." (Pl. Dep. at 9). Howard asked Weddell to loosen the cuff, and Weddell said something like, "I hope they break your wrists, smart ass." (*Id.*). Because of Howard's size and his coat, it was "hard" for Weddell "to get [Howard's] arms together" behind his back, so Weddell did not get a cuff on Howard's left wrist. (*Id.* at 14).

Weddell then led Howard, with his hands behind his back and only one cuff on, down a set of stairs. (*Id.*; *see* Video Footage). Howard again asked Weddell to release the cuff because it was "causing a lot of pain." (Pl. Dep. at 14–15). Weddell said, "You're gonna be a smart ass, you know, I hope it breaks your wrist." (*Id.* at 15).

Once they were outside the cellhouse, Weddell "smash[ed]" Howard's arms together and put the left cuff on. (*Id.*). Weddell "squeezed the cuffs so tight." (*Id.*). Howard "screamed out." (*Id.*). He felt "extreme pain" like the cuffs were "cutting into

[his] wrists." (*Id.* at 17). Weddell said, "Since you like to file grievances and write the court on officers, . . . I'm getting ready to do a little paperwork myself on you." (*Id.*). Weddell twisted Howard's wrists and moved the cuffs so that they were cutting into Howard's wrists. (*Id.* at 18). The pain was so "extreme" Howard "almost passed out." (*Id.*). Howard asked Weddell why he was hurting him, and Weddell said, "I hope [the handcuffs] hurt. I tried to break your fucking wrist. I know you file grievances and lawsuits. I write-up conduct reports to smart-asses like you." (Pl. Decl. ¶ 23).

Shortly thereafter, Howard was placed in a strip cell, and the cuffs were removed. (Pl. Dep. at 18). Howard's wrists were swollen, and his hands were bloody. (*Id.* at 18, 21). He saw "parts of [his] skin and blood" on the cuffs. (*Id.* at 18). According to Howard, he was then taken to Urgent Care because the cuffs had "cut into [his] wrist straight to the bone," and his hands and wrists were bleeding. (Pl. Decl. ¶ 35). Howard asserts that, since the incident, he has experienced various chronic issues with his wrists and hands. (*See, e.g.*, *id.* ¶¶ 27, 36–37).

2. Weddell's Evidence

Weddell contests significant portions of Howard's account of the incident. According to Weddell, during their argument on May 9, 2022, Howard threatened Weddell and said that "he was going to beat [Weddell] up." (Weddell Decl. ¶ 4). Weddell handcuffed Howard "in good faith due to Howard's conduct." (*Id.* ¶ 5). As Weddell tried to handcuff Howard, Howard resisted and "continued to be resistant and combative throughout the incident." (*Id.* ¶ 10). Weddell did not apply the handcuffs "in an overly tight or aggressive manner" and did not twist Howard's wrists or hands. (*Id.* ¶¶ 6–7). He

also did not tell Howard that he "hoped or intended to hurt him at all or that [he] was using any force due to any grievances or lawsuits filed by Howard." (*Id.* ¶ 12).

After the incident, Weddell wrote a report of the incident. (Use of Force Report; *accord* Pl.'s Exhibits at 61 (Ex. 14, Incident Report)). In it, Weddell wrote that Howard approached him, yelling that Weddell needed to open his cell faster. (Use of Force Report at 1). Howard then told Weddell "to do what he said, or he was going to beat [Weddell] up." (*Id.*). When Weddell ordered Howard to cuff up, Howard "continued to threaten" Weddell. (*Id.*). Weddell cuffed Howard's right arm, but Howard "refused to give [Weddell] his left arm." (*Id.*). Weddell placed Howard against the wall and ordered him to give Weddell his left arm, and Howard then "push[ed] his weight back against" Weddell. (*Id.*). While Weddell escorted Howard out of the cellhouse, Howard "started yelling at the other Incarcerated Individuals to turn it up and set this place off." (*Id.*).

Weddell asserts he "did not engage in any actions that would have caused Howard to suffer injuries." (Weddell Decl. ¶ 9). According to Weddell, Howard's hands and wrists were not swollen or bleeding after the incident. (*Id.* ¶ 8). Weddell asserts that Howard was taken to the infirmary after the incident "not because [he] sustained any injuries at all but rather as a precautionary measure in accordance with [a] policy" that all incarcerated individuals are taken to the infirmary for evaluation after force is used. (*Id.* ¶ 11). Additionally, Weddell notes that photographs of the inside of Howard's wrists taken after the incident do not show blood or visible wounds. (Filing No. 75-3, Photographs at 3–4). He also notes that Howard complained of problems with his wrists

prior to the incident. (*See* Filing No. 75-4, Feb. 2022 Medical Records at 1, 3 (reporting swelling, numbness, and pain in left wrist and hand in February 2022)).

C. Conduct Reports

After the incident, Weddell issued Howard conduct reports for resisting, threatening, and encouraging rioting. (Conduct Reports). In the resisting conduct report, Weddell wrote that he ordered Howard "to turn around and be restrained" and that Howard allowed Weddell to "restrain his right arm, and refused to give [Weddell] his left arm." (*Id.* at 2). Weddell placed Howard against the wall and ordered him to give Weddell his left arm, and Howard "then started to push his weight back against" Weddell. (*Id.*). In the threatening report, Weddell wrote that Howard yelled that Weddell needed to open his cell door faster and told Weddell "to do what he said, or he was going to beat [Weddell] up." (*Id.* at 3). Finally, in the conduct report for encouraging rioting, Weddell wrote that, as he escorted Howard out of the cellhouse, Howard yelled "at the other Incarcerated Individuals to turn it up and set this place off." (*Id.* at 1).

Weddell asserts that he issued these conduct reports "in good faith based upon Howard's behavior during the incident." (Weddell Decl. ¶ 14). Howard asserts that, because he complied with Weddell throughout the incident, these conduct reports are "false." (Pl.'s Exhibits at 18 (Ex. 4, Pl. Aff. ¶ 11); *see* Pl. Dep. at 22–23).

D. Disciplinary Hearing

A disciplinary hearing was held on the conduct reports. (*See* Filing No. 55-4, Hearing Reports). Miller served as the hearing officer. (Pl. Dep. at 22).

Prior to the hearing, Miller reviewed video footage of the incident. (Filing No. 55-3, Video Review Reports). At the hearing, Miller told Howard that he believed the footage showed Howard resisting Weddell during the handcuff incident. (Pl. Dep. at 22). He also told Howard he was going to "go with [Weddell's] word" and find Howard guilty. (*Id.* at 23, 41).

The parties disagree on what else, if anything, was said at the hearing. In an affidavit and declaration, Howard has stated that Miller, at some point, "stopped the hearing to speak with" Weddell, agreed to retaliate against Howard, and then told Howard, "Officer Weddell said you the one who has been filing grievances and lawsuits. We just gon [sic] find you guilty and let you sit and think about it." (Pl.'s Exhibits at 18 (Ex. 4, Pl. Aff. ¶¶ 12–13); Pl. Decl. ¶¶ 47–48). At his deposition, Howard initially testified that Miller said "something" during the hearing about Howard filing grievances and complaints. (Pl. Dep. at 23). But Howard later testified that he did not "recall [Miller] making a statement" about his grievances and complaints during the hearing "with Weddell" but that Miller "might have" made such a statement at another hearing. (*Id.* at 41).

By contrast, Miller asserts he had no "knowledge of any prior grievances or lawsuits" filed by Howard. (Miller Decl. ¶ 8; *see also* Weddell Decl. ¶ 14 (stating he never told Miller that Howard filed grievances or lawsuits)). He also asserts he reached his conclusions on Howard's conduct violations "based upon [his] evaluation and interpretation of the evidence, including the conduct[] records and the video footage," not because of any grievances or lawsuits filed by Howard. (Miller Decl. ¶¶ 7–8).

After the hearing, Miller found Howard guilty of threatening and resisting. (Hearing Reports at 2–3). He did not find Howard guilty of encouraging rioting and instead found him guilty of disruptive behavior. (*Id.* at 1).

Howard appealed his conduct violations for resisting. (Pl. Dep. at 23–24; Filing No. 55-5, Appeal). The appeal officer overturned Howard's violation for resisting and lowered it to a violation for disruptive behavior. (Appeal at 1; Filing No. 55-6, Pl.'s Conduct Summary at 1). The officer reasoned that the video footage did "not demonstrate physical resistance" by Howard but did show "[p]assive resistance to some degree." (Appeal at 1). He also noted Howard "admit[ted] to being loud [and] argumentative" during the incident. (*Id.*).

II. Standard of Review

Summary judgment is appropriate if "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 genuine dispute about a material fact exists only "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The court cannot weigh evidence or make credibility determinations on summary judgment. *Miller v. Gonzalez*, 761 F.3d 822, 827 (7th Cir. 2014).

When reviewing a motion for summary judgment, the court views the record, and draws all reasonable inferences from it, in the light most favorable to the nonmoving party. *Khungar v. Access Cmty. Health Network*, 985 F.3d 565, 572–73 (7th Cir. 2021). Thus, when reviewing cross-motions for summary judgment, the court draws all

reasonable inferences in favor of the party against whom the motion at issue was made. *Valenti v. Lawson*, 889 F.3d 427, 429 (7th Cir. 2018). "The existence of cross-motions for summary judgment does not . . . imply that there are no genuine issues of material fact." *R.J. Corman Derailment Servs., LLC v. Int'l Union of Operating Eng'rs, Loc. Union 150*, 335 F.3d 643, 647 (7th Cir. 2003).

III. Discussion

Howard brings an Eighth Amendment excessive force claim against Weddell and First Amendment retaliation claims against Weddell and Miller. (Filing No. 2, Compl.; Filing No. 15, Screening Order). Howard moves for summary judgment on all claims, and Miller moves for summary judgment on the First Amendment retaliation claim asserted against him.

A. Eighth Amendment Excessive Force

First, Howard asserts Weddell violated his Eighth Amendment rights by using excessive force against him during the handcuff incident.

"The Eighth Amendment's protection against cruel and unusual punishment prohibits the 'unnecessary and wanton infliction of pain' on prisoners." *Jones v. Anderson*, 116 F.4th 669, 677 (7th Cir. 2024) (quoting *Hudson v. McMillian*, 503 U.S. 1, 5 (1992)). This rule does not bar "*de minimis* uses of force that are not of the kind that would be 'repugnant to the conscience of mankind.'" *McCottrell v. White*, 933 F.3d 651, 664 (7th Cir. 2019) (quoting *Hudson*, 503 U.S. at 9–10). But even if the force applied is not *de minimis*, it remains permissible if used "in a good-faith effort to maintain or restore discipline." *Id.* (quoting *Hudson*, 503 U.S. at 6–7). Malicious or sadistic force—even if

it does not cause a serious injury—is prohibited. *Id.* To distinguish between good-faith and malicious force, the court considers several factors, including:

> (1) the need for the application of force; (2) the relationship between the need and the amount of force that was used; (3) the extent of injury inflicted; (4) the extent of the threat to safety of staff and inmates, as reasonably perceived by the responsible officials on the basis of the facts known to them; and (5) any efforts made to temper the severity of a forceful response.

Id. at 663 (citing *Whitley v. Albers*, 475 U.S. 312, 321 (1986)). "Infliction of pain that is 'totally without penological justification' is *per se* malicious." *Fillmore v. Page*, 358 F.3d 496, 504 (7th Cir. 2004) (quoting *Hope v. Pelzer*, 536 U.S. 730, 737 (2002)).

As the court's factual summary demonstrates, Weddell has identified several disputes of material fact that preclude summary judgment for Howard. For example, it is disputed whether Howard resisted Weddell's orders, whether Howard threatened Weddell, whether Weddell twisted Howard's wrists or handcuffs, whether Weddell stated that he hoped to break Howard's wrists, and whether Howard sustained any injuries because of the incident. Therefore, Howard is not entitled to summary judgment on his Eighth Amendment excessive force claim against Weddell.

B. First Amendment Retaliation

Howard also brings First Amendment retaliation claims against Weddell and Miller.

To succeed on a First Amendment retaliation claim, a plaintiff must show: (1) he "engaged in protected First Amendment activity," (2) he "suffered a deprivation that would likely deter future First Amendment activity," and (3) "the First Amendment activity was a motivating factor in the defendant's decision to take the retaliatory action."

Jones v. Van Lanen, 27 F.4th 1280, 1284 (7th Cir. 2022) (quoting *Walker v. Groot*, 867 F.3d 799, 803 (7th Cir. 2017)). The "motivating factor" element "amounts to a causal link between the activity and the unlawful retaliation." *Manuel v. Nalley*, 966 F.3d 678, 680 (7th Cir. 2020) (quoting *Kidwell v. Eisenhauer*, 679 F.3d 957, 965 (7th Cir. 2012)). If the plaintiff is successful in showing those three elements, the burden shifts to the defendant to show that the deprivation would have occurred even if the plaintiff had not engaged in protected activity. *Id.* If the defendant can make that showing, the burden shifts back to the plaintiff to "demonstrate the proffered reason is pretextual or dishonest." *Id.*

Defendants do not dispute that Howard engaged in activity protected by the First Amendment or that a deprivation occurred that would likely deter future activity. Thus, the court's analysis focuses on the motivations behind Defendants' decisions.

1. Officer Weddell

Howard asserts that Weddell retaliated against him for filing grievances and lawsuits by using excessive force against him during the handcuff incident and by filing false conduct reports against Howard after the incident.

Again, as the court's factual summary demonstrates, Weddell has identified several material fact disputes that preclude summary judgment for Howard. According to Howard, during the handcuff incident, Weddell said that he tried to break Howard's wrists, that he knew Howard "file[s] grievances and lawsuits," and that he writes "conduct reports to smart-asses like" Howard. (Pl. Decl. ¶ 23). Howard contends he did not resist Weddell's order to cuff up and that Weddell therefore had no justification for his use of force or the conduct reports. By contrast, Weddell asserts that he used force and

issued conduct reports because of "Howard's conduct during the incident." (Weddell Decl. ¶¶ 12–13). Weddell further asserts that Howard threatened him and was "resistant and combative throughout" the handcuff incident. (*Id.* ¶¶ 4, 10). He also asserts that he never told Howard that he intended to hurt him or that he "was using any force due to any grievances or lawsuits." (*Id.* ¶ 12). Accordingly, there is a genuine dispute of material fact as to whether Howard's First Amendment activity was a motivating factor in Weddell's decisions to use force and file conduct reports. Howard is therefore not entitled to summary judgment on his First Amendment retaliation claim against Weddell.

2. Sergeant Miller

Howard also asserts that Miller retaliated against him for filing grievances and lawsuits by finding him guilty of false conduct violations at the disciplinary hearing. Miller moves for summary judgment on this claim, arguing that it is undisputed that he found Howard guilty based on his interpretation of the evidence, not in retaliation for any First Amendment activity. Howard also moves for summary judgment on this claim, arguing he has put forth evidence from which a jury could conclude Miller retaliated against him.

In arguing that Miller's decision was motivated by Howard's First Amendment activity, Howard relies on Paragraph 48 of his summary judgment declaration. In it, Howard states that Miller said at the disciplinary hearing, "Officer Weddell said you the one who has been filing grievances and lawsuits. We just gon [sic] find you guilty and let you sit on lockup and think about it." (Pl. Decl. ¶ 48). Miller argues Howard cannot rely on Paragraph 48 because it contradicts Howard's earlier deposition testimony. *See Thorn*

v. Sundstrand Aerospace Corp., 207 F.3d 383, 389 (7th Cir. 2000) (explaining an individual cannot make a substantive change to a deposition transcript that "actually contradicts the transcript . . . unless it can plausibly be represented as the correction of an error in transcription"); *see also James v. Hale*, 959 F.3d 307, 316 (7th Cir. 2020) ("[T]he sham-affidavit rule prohibits a party from submitting an affidavit that contradicts the party's prior deposition or other sworn testimony.").

Howard's testimony has been inconsistent as to what Miller said at the disciplinary hearing at issue in this case. Days after the handcuff incident, Howard signed an affidavit that included a paragraph identical to Paragraph 48. (*Compare* Pl. Decl. ¶ 48, *with* Pl.'s Exhibits at 18 (Ex. 4, Pl. Aff. ¶ 13)). At his deposition, Howard initially testified that Miller said "something" about his grievances and complaints at the disciplinary hearing with Weddell. (Pl. Dep. at 23). But he also testified that Miller made such a statement at a different hearing and that he did not "recall" such a statement at the hearing "with Weddell." (*Id.* at 41). Then, at summary judgment, Howard submitted his declaration containing Paragraph 48. (Pl. Decl. ¶ 48).

Howard's inconsistency is an issue of credibility to be resolved by the jury, not by the court at summary judgment. *See Allen v. Chi. Transit Auth.*, 317 F.3d 696, 699–700 (7th Cir. 2003) ("When a witness repeatedly contradicts himself under oath on material matters, . . . the witness's credibility becomes an issue for the jury; it cannot be resolved in a summary judgment proceeding."); *United States v. Funds in the Amount of $271,080*, 816 F.3d 903, 907 (7th Cir. 2016) ("Changes in testimony normally affect the witness's credibility rather than the admissibility of the testimony . . . ."); *Castro v. DeVry Univ.,*

Inc., 786 F.3d 559, 571 (7th Cir. 2015) (cautioning that the sham affidavit rule "must be applied with great care . . . because summary judgment is not a tool for deciding questions of credibility"). At summary judgment, the court will neither exclude Howard's declaration nor ignore his evidence that Miller made a statement about his grievances and lawsuits at the disciplinary hearing. *See, e.g.*, *Castro*, 786 F.3d at 571 (suggesting an affidavit should only be excluded as a sham in cases "involv[ing] contradictions so clear that the only reasonable inference was that the affidavit was a sham designed to thwart the purposes of summary judgment"); *Soyinka v. Franklin Collective Serv., Inc.*, No. 1:19-CV-04691, 2022 WL 900161, at *6 (N.D. Ill. Mar. 27, 2022) (declining to apply sham affidavit rule to affidavit made before deposition).

Considering Paragraph 48 and the other evidence in the record, the court concludes there are genuine issues of material fact precluding summary judgment. At times, Howard has testified that Miller said he knew about Howard's grievances and lawsuits, that Miller agreed to retaliate against Howard for those filings, and that Miller said he would find Howard guilty on Weddell's word alone. Howard also points to the fact that his violation for resisting was overturned on appeal. Miller, by contrast, asserts he did not know about Howard's grievances and lawsuits and found Howard guilty based solely on his interpretation of the evidence. There is clearly a dispute as to whether Miller knew about Howard's grievances and lawsuits. *See Kotaska v. Fed. Express Corp.*, 966 F.3d 624, 633 (7th Cir. 2020) ("A valid retaliation claim requires that the decisionmaker know of the protected activity."). Relatedly, it is disputed whether Howard's grievances and lawsuits were a motivating factor in Miller's decision and

whether Miller's stated reason for finding Howard guilty is honest. These material fact disputes preclude summary judgment for either party.

Miller also briefly argues that he is entitled to qualified immunity, which shields officers from liability "insofar as their conduct does not violate clearly established . . . constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The parties do very little to assist the court in its analysis. That said, at the time of Miller's alleged retaliation against Howard, it was well-established that a prison official could not punish a prisoner in retaliation for filing grievances or lawsuits. *See Babcock v. White*, 102 F.3d 267, 276 (7th Cir. 1996) ("The federal courts have long recognized a prisoner's right to seek administrative or judicial remedy of conditions of confinement . . . , as well as the right to be free from retaliation for exercising this right. . . . A prison official . . . would have been on notice that *any* retaliation, whatever its shape, could give rise to liability." (internal citations omitted)); *see also Antoine v. Ramos*, 497 F. App'x 631, 634–35 (7th Cir. 2012) (concluding officer who allegedly issued a false "disciplinary ticket" in retaliation for plaintiff threatening to sue was not entitled to qualified immunity "because a prisoner's First Amendment right to file grievances is clearly established").

The fact disputes discussed above are therefore "inextricably bound up with the question of whether [Miller] violated clearly established law." *Davis v. Allen*, 112 F.4th 487, 495 (7th Cir. 2024). Thus, the fact disputes "preclude[] a ruling on qualified immunity at this point." *Smith v. Finkley*, 10 F.4th 725, 750 (7th Cir. 2012) (quoting

Strand v. Minchuk, 910 F.3d 909, 918–19 (7th Cir. 2018)). Accordingly, Miller is not entitled to summary judgment on the basis of qualified immunity.

In sum, neither Howard nor Miller is entitled to summary judgment on Howard's First Amendment retaliation claim against Miller.

IV. Conclusion

Miller's Motion for Partial Summary Judgment (Filing No. 55) is **DENIED**. Howard's Motion for Summary Judgment (Filing No. 60) is also **DENIED**.

The court prefers that Howard be represented by counsel for the remainder of this action. To that end, the Clerk is **DIRECTED** to **MAIL** Howard a Motion for Assistance with Recruiting Counsel with his copy of this Entry. Howard has **30 days from the date of this Entry** to file a motion for counsel using this form motion or to inform the court that he wishes to proceed *pro se*. Once the motion has been ruled on and counsel has been recruited, the Magistrate Judge is asked to schedule a telephonic status conference to discuss further proceedings.

IT IS SO ORDERED this 17th day of January 2025.

RICHARD L. YOUNG, JUDGE
United States District Court
Southern District of Indiana

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