

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ZACHARY J. MCGINNIS,)	
)	
Plaintiff,)	
)	
v.)	No. 1:23-cv-02242-JRS-KMB
)	
CHRISTOPHER MARTIN,)	
ALEXZANDER KOENIG,)	
AMANDA TERRY,)	
)	
Defendants.)	

**ORDER GRANTING AND DENYING DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Plaintiff Zachary McGinnis alleges that Sergeant Christopher Martin, Officer Alexzander Koenig, and Officer Amanda Terry violated his Eighth Amendment rights by subjecting him to unsanitary conditions of confinement during sewage floods on November 29, 2023, and December 18, 2023. Dkt. 26. The Defendants have moved for partial summary judgment, arguing that Officer Koenig was not personally involved in any of the events at issue and that Officer Terry and Sergeant Martin did not display deliberate indifference to Mr. McGinnis's cell conditions on December 18. Dkt. 71. For the reasons below, the Defendants' motion, dkt. [71], is **GRANTED** as to Officer Koenig and Officer Terry, it is **DENIED** as to Sergeant Martin.

**I.
Summary Judgment Standard**

A motion for summary judgment asks the Court to find that a trial is unnecessary because there is no genuine dispute as to any material fact and, instead,

the movant is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a). 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). It cannot weigh evidence or make credibility determinations on summary judgment because those tasks are left to the fact-finder. *Miller v. Gonzalez*, 761 F.3d 822, 827 (7th Cir. 2014). A court only has to consider the materials cited by the parties, *see* Fed. R. Civ. P. 56(c)(3); it need not "scour the record" for evidence that might be relevant. *Grant v. Trs. of Ind. Univ.*, 870 F.3d 562, 573–74 (7th Cir. 2017) (cleaned up).

A party seeking summary judgment must inform the district court of the basis for its motion and identify the record evidence it contends demonstrates the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

Whether a party asserts that a fact is undisputed or genuinely disputed, the party must support the asserted fact by citing to particular parts of the record, including depositions, documents, or affidavits. Fed. R. Civ. P. 56(c)(1)(A). Failure to properly support a fact in opposition to a movant's factual assertion can result in the movant's fact being considered undisputed, and potentially in the grant of summary judgment. Fed. R. Civ. P. 56(e).

II. Factual Background

Because Defendants have moved for summary judgment under Rule 56(a), the Court views and recites the evidence in the light most favorable to the non-moving

party, Mr. McGinnis, and draws all reasonable inferences in his favor. *Khungar*, 985 F.3d at 572–73. All facts are undisputed unless otherwise noted.

During the events in this lawsuit, Mr. McGinnis resided in G Cellhouse, which is a disciplinary restricted housing unit located within Pendleton Correctional Facility. Dkt. 72-1 at 9:21-25 (McGinnis Dep.).

An inmate in the cell above Mr. McGinnis had a "habit" of letting feces build up in his toilet for a long period of time and then flooding the toilet when he did not get his way. *Id.* at 12:4-12. On November 29, 2023, and December 18, 2023, that inmate caused his toilet to flood, leading sewage to spread to the range and cells below, including Mr. McGinnis's cell. *Id.* at 12:8-15; *id.* at 9:1-4. On December 18, after "quite a while," the staff turned off the water to the inmate's cell to stop the flooding. *Id.* at 20:1-8. Sergeant Martin refused to give Mr. McGinnis "cleaning material" or "biohazard." *Id.* at 9:5-12. Biohazard cleaned the range about four hours after the flood started, but did not clean anything inside Mr. McGinnis's cell. *Id.* at 9:5-12. Mr. McGinnis notified Sergeant Martin that his cell still had sewage and showed him his cell, but Sergeant Martin refused to let him clean his cell. *Id.* at 9:1-12.

On December 18, Officer Terry delivered Mr. McGinnis's food sack while the sewage was still dripping, allowing it to get into his food. *Id.* at 9:13-20. After Mr. McGinnis complained about the sewage in his food, Officer Terry told him to take it or go hungry. *Id.* Mr. McGinnis did not request any cleaning supplies from Officer Terry because she only appeared on the range to deliver food. *Id.* at 16:24–17:2.

Staff also called a plumber, who arrived about three hours later. Dkt. 72-3 at 4 (G Cellhouse Logbook Entry for December 18, 2023). Later that day, an officer from the night shift offered Mr. McGinnis and other inmates a dirty mop to clean the sewage water out of their cells. Dkt. 72-1 at 13:2-10. Mr. McGinnis was not given any cleaning chemicals. *Id.* The sewage remained in Mr. McGinnis's cell for about two to three days, until he received cleaning supplies on Sunday, which was the designated weekly time for cleaning. *Id.* at 12:16-25.

Officer Koenig was not employed at Pendleton when the events occurred in this lawsuit. Dkt. 72-2 ¶ 2. His last day at Pendleton was October 23, 2023. *Id.* ¶ 3.

III. Discussion

Under the Eighth Amendment, "prisoners cannot be confined in inhumane conditions." *Thomas v. Blackard*, 2 F.4th 716, 720 (7th Cir. 2021) (citing *Farmer v. Brennan*, 511 U.S. 825, 832 (1994)). An Eighth Amendment conditions-of-confinement claim includes both an objective and subjective component. *Giles v. Godinez*, 914 F.3d 1040, 1051 (7th Cir. 2019). Under the objective component, a prisoner must show that the conditions were objectively serious and created "an excessive risk to his health and safety." *Id.* Conditions of confinement count as objectively serious when they deny a prisoner "the minimal civilized measure of life's necessities," such as sanitation and adequate shelter. *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981); *Thomas v. Illinois*, 697 F.3d 612, 614 (7th Cir. 2012); *Vinning-El v. Long*, 482 F.3d 923, 924 (7th Cir. 2007). Under the subjective component, a prisoner must establish that the defendants had a culpable state of mind—that they "were

subjectively aware of these conditions and refused to take steps to correct them, showing deliberate indifference." *Thomas*, 2 F.4th at 720. Proving the subjective component is a "high hurdle" that "requires something approaching a total unconcern for the prisoner's welfare in the face of serious risks." *Donald v. Wexford Health Sources, Inc.*, 982 F.3d 451, 458 (7th Cir. 2020) (internal quotations omitted). "With respect to the culpable state of mind, negligence or even gross negligence is not enough." *Lee v. Young*, 533 F.3d 505, 509 (7th Cir. 2008).

"To recover damages under § 1983, a plaintiff must establish that a defendant was personally responsible for the deprivation of a constitutional right." *Whitfield v. Spiller*, 76 F.4th 698, 706 (7th Cir. 2023) (quoting *Gentry v. Duckworth*, 65 F.3d 555, 561 (7th Cir. 1995)). Accordingly, each Defendant is considered independently. *Id.*

Officer Koenig

Mr. McGinnis concedes that the Court should grant summary judgment for Officer Koenig because he was not employed at Pendleton during the events in this lawsuit and thus, was not personally involved in any of the alleged constitutional violations. Dkt. 77 at 4. The Court **GRANTS** summary judgment for Officer Koenig.

Officer Terry

The Defendants do not dispute that the sewage flood on December 18, 2023, created an objectively serious risk to Mr. McGinnis's health and safety.¹ Instead, they

¹ Defendants' brief in support of their motion for summary judgment focuses exclusively on the subjective component of Mr. McGinnis's Eighth Amendment claim. Dkt. 73 at 4–6. Defendants' reply brief argues that Mr. McGinnis has not shown that the conditions in his cell were objectively serious. Dkt. 79 at 2. But, "[i]n most instances, litigants waive any arguments they make for the first time in a reply brief." *United States v. Desotell*,

argue that Officer Terry was not deliberately indifferent to the risk created by the sewage flood. Dkt. 73 at 5. In their reply, Defendants clarified that they recognize a dispute of fact over Officer Terry's delivery of food to Mr. McGinnis during the December 18 flood and that they are only moving for summary judgment on Officer Terry's deliberate indifference toward Mr. McGinnis's cell conditions. Dkt. 79 at 2 n.1. As such, Defendants argue that Mr. McGinnis has not proven that Officer Terry refused to take steps to mitigate the unsanitary conditions caused by the sewage flood.

The Court agrees. The record does not allow a reasonable jury to conclude that Officer Terry displayed deliberate indifference toward Mr. McGinnis's cell conditions. Mr. McGinnis testified that on December 18, Officer Terry was only on the range to deliver food and that he did not ask her for cleaning supplies. *Id.* at 16:24–17:2. Thus, she did not have a role in managing the flood and, because she was not asked for cleaning supplies, a jury could not infer that she refused to take steps to mitigate the unsanitary conditions. Thus, the Court **GRANTS** summary judgment to Officer Terry on the conditions-of-confinement claim.

Sergeant Martin

929 F.3d 821, 826 (7th Cir. 2019); *see O'Neal v. Reilly*, 961 F.3d 973, 974 (7th Cir. 2020) (collecting cases) (explaining that the Seventh Circuit has "repeatedly recognized that district courts are entitled to treat an argument raised for the first time in a reply brief as waived"); *Schaefer v. Universal Scaffolding & Equip., LLC*, 830 F.3d 599, 607 (7th Cir. 2016) ("Perfunctory and undeveloped arguments are waived, as are arguments unsupported by legal authority.").

Defendants argue that Sergeant Martin did not display deliberate indifference toward the unsanitary cell conditions on December 18. Dkt. 73 at 5. They argue that there is no evidence that Sergeant Martin delayed Biohazard or plumbing, and, in any case, Mr. McGinnis did receive a mop from someone on nightshift later in the day. *Id.*

Disputes of fact preclude summary judgment for Sergeant Martin. First, as Mr. McGinnis argues, he personally informed Sergeant Martin about the sewage in his cell and Sergeant Martin still refused to provide cleaning supplies or allow Biohazard to clean his cell. Dkt. 77 at 3–4; dkt. 72-1 at 9:1-12. Taking all inferences in Mr. McGinnis's favor, a reasonable jury could conclude that Sergeant Martin both knew about the serious conditions created by the sewage flood and refused to take reasonable steps to mitigate the risk to Mr. McGinnis by providing cleaning supplies or allowing Biohazard to clean his cell. *See Gray v. Hardy*, 826 F.3d 1000, 1008 (7th Cir. 2016) (explaining that to survive summary judgment, "it is enough to show that [the defendant] 'acted or failed to act despite his knowledge of a substantial risk.'" (quoting *Farmer*, 511 U.S. at 842); *cf. Thomas*, 2 F.4th at 721 (explaining that the plaintiff did not satisfy the subjective component of his Eighth Amendment claim because the record showed that the defendants promptly gave him an unsoiled mattress and cleaning supplies to deal with his unsanitary cell conditions).

The Defendants also argue that Mr. McGinnis's claims against Sergeant Martin fail because he has not provided evidence of the exact quantity of water or sewage that remained in his cell after Biohazard cleaned the range and before he

received the mop from a night shift officer. Dkt. 73 at 5–6. But the fact that Mr. McGinnis's testimony about the exact conditions of his cell is vague goes to the weight of the evidence. *See Paz v. Wauconda Healthcare & Rehab. Ctr., LLC*, 464 F.3d 659, 664 (7th Cir. 2006) ("At summary judgment, a court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from the facts; these are jobs for a factfinder.") (internal quotations and citations omitted). Importantly, his testimony satisfies the requirements of Rule 56 because it is based on his personal experience of residing in his cell during the flood and speaking to Sergeant Martin about the conditions. *See Fed. R. Civ. P. 56(c)(4); Paz*, 464 F.3d at 665 (explaining that "evidence presented in a 'self-serving' affidavit or deposition is enough to thwart a summary judgment motion provided it meets the usual requirements for evidence at summary judgment stage.") (quoting *Payne v. Pauley*, 337 F.3d 767, 770 (7th Cir. 2003)). Although the testimony could be more precise, it is not conclusory or speculative. *See, e.g., Osborn v. JAB Mgmt. Servs., Inc.*, 126 F.4th 1250, 1260 (7th Cir. 2025) ("speculation will not do[]" to survive summary judgment).

Accordingly, Mr. McGinnis's testimony provides a reasonable basis for inferring that his cell had sewage in it after Biohazard cleaned the range. First, Mr. McGinnis testified, and the Defendants have not refuted, that Biohazard only cleaned the ranges—not the inmates' cells. Second, even though the Defendants call the mop "cleaning supplies" in their briefing, Mr. McGinnis testified that it was a single dirty mop that all the inmates shared to push water out of their cells and into the range. Dkt. 77 at 4; dkt. 72-1 at 13:3-10. Last, Mr. McGinnis testified that sewage remained

in his cell for another two to three days until he received cleaning supplies during the designated time. Dkt. 72-1 at 12:20-25. Taking all inferences in the light most favorable to Mr. McGinnis, there is a dispute of material fact over the extent of the unsanitary conditions both before and after Biohazard cleaned the range and whether Sergeant Martin took reasonable steps to address these conditions.

Accordingly, the Court **DENIES** summary judgment for Sergeant Martin.


IV. Conclusion

The Defendants' motion for partial summary judgment, dkt. [71] is **GRANTED** as to Officer Koenig and Officer Terry and **DENIED** as to Sergeant Martin. The following claims must be resolved through settlement or trial: Mr. McGinnis's Eighth Amendment claim against Sergeant Martin regarding the sewage flooding on November 29, 2023, and December 18, 2023, and Mr. McGinnis's Eighth Amendment claims against Officer Terry regarding the delivery of food to Mr. McGinnis on December 18, 2023.

The Court prefers that Mr. McGinnis be represented by counsel for the remainder of this action. The **clerk is directed** to send Mr. McGinnis a motion for assistance recruiting counsel with his copy of this Order. Mr. McGinnis has **through June 19, 2026**, 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.

Date: 05/18/2026



JAMES R. SWEENEY II, CHIEF JUDGE
United States District Court
Southern District of Indiana

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