

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

TIMOTHY J. WINSTON, II,)	
)	
Plaintiff,)	
)	
v.)	No. 1:24-cv-00486-JRS-MJD
)	
H. TREVASKIS,)	
)	
Defendant.)	

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Timothy J. Winston, II, alleges that while he was incarcerated at the Correctional Industrial Facility ("CIF") in Pendleton, Indiana, he was subjected to excessive force by Officer H. Trevaskis in violation of the Eighth Amendment. Officer Trevaskis has moved for summary judgment. Dkt. [40]. For the reasons below, that motion is **denied**.

**I.
Standard of Review**

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 Officer Trevaskis has moved for summary judgment under Rule 56(a), the Court views and recites the evidence in the light most favorable to Mr. Winston and draws all reasonable inferences in his favor. *Khungar*, 985 F.3d at 572–73.

During all relevant times, Mr. Winston was incarcerated at CIF. Dkt. 1 at 1-2.

On November 15, 2023, Mr. Winston urinated on the gym floor during recreation. Sgt. Pardue confirmed the misconduct via video footage and issued Plaintiff a conduct report. Dkt. 40-2 at 3-5. As a result of the conduct report, Mr. Winston was on a thirty-day (30) restriction from attending recreation. Dkt. 40-1 at 1. 6. On December 1, while the rest of Plaintiff's range went to recreation, he stayed in his cell. *Id.* When the other inmates returned from recreation around 11:40 a.m., Mr. Winston exited his cell with a cup to visit the day-room ice machine. Dkt. 1 at 7; dkt. 40-3 at 11.

Officer Trevaskis, who was responsible for securing the inmates in their cells, noticed Mr. Winston outside of his cell without permission. Dkt. 40-3 at 11. Officer Trevaskis approached Mr. Winston to tell him that he was not allowed to get ice until dayroom time and ordered him back to

his cell. *Id.*; dkt. 40-1 at 2. Officer Trevaskis saw Mr. Winston begin to walk to his cell, so she returned to her duties, but once she moved away from the ice machine, Mr. Winston quickly returned to the ice machine before Officer Trevaskis could stop him. *Id.* Officer Trevaskis returned to the ice machine and told Mr. Winston to return to his cell. *Id.* Mr. Winston did not return to his cell, and Officer Trevaskis closed the lid to the ice machine. *Id.* The lid closed on Mr. Winston's arm, he dropped his cup, and he bent down to pick it up. *Id.* Officer Trevaskis again ordered Mr. Winston to return to his cell, he complied, and Officer Trevaskis accompanied him back to his cell. *Id.*

Mr. Winston complained that he needed to go to the medical unit because his arm was broken. *Id.* Another correctional officer escorted Mr. Winston to medical. *Id.* On the way out, Mr. Winston told Officer Trevaskis he was going to "Love taking me (sic) job" and he "didn't even have to be hurt to take my job from [her]." *Id.*

Mr. Winston was seen by RN Tina Collins and complained of pain to the left arm. Dkt. 40-7 at 8. Nurse Collins noted pain "with palpation to a small area of the lateral left elbow" and swelling. *Id.* Mr. Winston was treated with a sling and Tylenol. *Id.* On April 3, 2024, Mr. Winston returned to medical for a visit with RN Jodean Ayres complaining of pain to his left arm rendering him unable to use it to drink. *Id.* at 6. Mr. Winston reported the pain in his left shoulder was impossible to relieve, and it was a "stinging" feeling at a 7/10 pain level. *Id.* at 7. Nurse Ayres observed no swelling but referred Mr. Winston to a doctor for assessment. *Id.*

On April 10, Mr. Winston was seen by Dr. John Heflin for pain in his left shoulder and elbow. *Id.* at 3. Mr. Winston described the pain as "aching" and reported a decreased range of motion. *Id.* He struggled to lift his left arm over his head. *Id.* Upon examination, Dr. Heflin noted no tenderness to the shoulder and elbow. *Id.* at 4. Dr. Heflin prescribed Tylenol and ibuprofen and

ordered x-rays for the shoulder and elbow. *Id.* The x-rays were taken on April 15 and did not "demonstrate fracture or dislocation." *Id.* at 1. The reviewing physician, Dr. Robert Mehl, noted the "radio-humeral and ulna-humeral joints appear intact," and he did not see any evidence of joint diffusion. *Id.* Overall, the "[l]eft elbow appear[ed] within normal limits." *Id.* Dr. Mehl also read the x-rays for Plaintiff's left shoulder and observed (1) no evidence of acute bony abnormality; (2) the acromio-clavicular and gleno-humeral joints were intact; and (3) no significant degenerative change. Dkt. 40-7 at 2. As of November 15, 2024, Mr. Winston continued to report experiencing pain on most days. (Ex. B, at 4).

III. Discussion

The Eighth Amendment protects inmates from cruel and unusual punishment, including excessive force by prison officials. *McCottrell v. White*, 933 F.3d 651, 662 (7th Cir. 2019). This rule does not bar *de minimis* force unless the force is "of a sort repugnant to the conscience of mankind." *Wilkins v. Gaddy*, 559 U.S. 34, 37–38 (2010) (per curiam) (cleaned up). Even if the force applied is not *de minimis*, it remains permissible if used "in a good-faith effort to maintain or restore discipline." *McCottrell*, 933 F.3d at 664 (cleaned up). But malicious or sadistic force—even if it does not cause a serious injury—is prohibited. *Id.* To distinguish between good-faith and malicious force, courts consider 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 the 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; *see also Whitley v. Albers*, 475 U.S. 312, 321 (1986). These factors are sometimes referred to as the "*Whitley* factors." Additionally, to survive summary judgment, a plaintiff must present evidence supporting "a reliable inference of wantonness in the infliction of pain." *Whitley*,

475 U.S. at 322.

Officer Trevaskis admits closing the ice machine lid on Mr. Winston's arm, but she contends that this use of force was either completely accidental, or was at most a *de minimis* use of force that was not wanton or malicious. Dkt. 41 at 3-6. She also argues that Mr. Winston's injuries are insufficient to show excessive force. *Id.* at 6.

The Court finds questions of fact exist as to whether Officer Trevaskis deliberately closed the ice machine on Mr. Winston and whether it resulted in serious and long-lasting harm to him. She tries to minimize her intent in closing the ice machine, but she admitted closing it nonetheless. Whether closing Mr. Winston's arm in the ice machine truly was merely an "accident" or the result of malicious intent on Officer Trevaskis' part, are issues that a jury must resolve. *See Ashman v. Barrows*, 438 F.3d 781, 784 (7th Cir. 2006) ("We are particularly leery of resolving issues involving a state of mind on summary judgment.") "Summary judgment is notoriously inappropriate for determination of claims in which issues of intent, good faith and other subjective feelings play dominant roles." *McGreal v. Ostrov*, 368 F.3d 657, 677 (7th Cir. 2004) (cleaned up). Credibility issues will defeat summary judgment if "an issue as to a material fact cannot be resolved without observation of the demeanor of witnesses in order to evaluate their credibility" *Outlaw v. Newkirk*, 259 F.3d 833, 838 (7th Cir. 2001) (quoting Advisory Committee Notes to Fed. R. Civ. P. 56(e)).

Officer Trevaskis also suggests that Mr. Winston himself stated he did not "even have to be hurt to take [my job]." Dkt. 40-1 at 2. It is not clear that Mr. Winston said or believed that. Whether Officer Trevaskis was deliberately aiming for Mr. Winston's arm is an issue that a jury must decide after hearing her testimony and assessing her demeanor. *See McCottrell*, 933 F.3d at 665 ("A jury may infer intent to make physical contact from the nature of the act taken").

Furthermore, there is evidence in the record now before the Court that shutting Mr. Winston's arm in the ice machine was done with enough force to cause lasting pain and physical problems for Mr. Winston for at least several months after the incident, if not longer. It could be that the jury instead credits the evidence of no injury or finds that his pain and problems arose from a different and unrelated issue altogether, but there is insufficient designated evidence to reach a conclusion as a matter of law.

So, assuming that Officer Trevaskis deliberately closed the ice machine on Mr. Winston's arm and caused him lasting physical pain, the next and separate question is whether that would constitute a *de minimis* use of force as a matter of law. The Court cannot so conclude. It is true that "not 'every malevolent touch by a prison guard gives rise to a federal cause of action.'" *McCottrell*, 933 F.3d at 664 (quoting *Hudson v. McMillan*, 503 U.S. 1, 9 (1992)). The Eighth Amendment does not apply to "*de minimis* uses of force that are not of the kind that would be 'repugnant to the conscience of mankind.'" *Id.* (quoting *Hudson*, 503 U.S. at 9-10). But, "[w]hen prison officials maliciously and sadistically use force to cause harm, contemporary standards of decency always are violated." *Hudson*, 503 U.S. at 9. An inmate need not suffer "significant" injury from the use of force in order to show that the force was employed maliciously or sadistically, but the extent of injury may "provide some indication of the amount of force applied" *McCottrell*, 933 F.3d at 664.

Mr. Winston claims that Officer Trevaskis closed the ice machine with enough force to cause Mr. Winston lasting and serious physical problems. The medical evidence is to the contrary. In sum, there are material issues of fact as to whether Officer Trevaskis' action caused injury and whether the force was or was not *de minimis* for Eighth Amendment purposes.

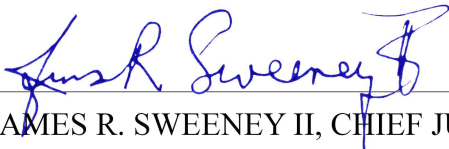
IV. Conclusion

Officer Trevaskis' motion for summary judgment is **denied**. Dkt. [40].

The Court prefers that Mr. Winston be represented by counsel for the remainder of this action. The **clerk is directed** to send Mr. Winston a motion for assistance recruiting counsel with his copy of this Order. Mr. Winston has **28 days** in which 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: 2/23/2026



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

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