UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Gerald J. Lindsly,	:	Case No. 1:09-cv-00375
	:	
Plaintiff,	:	Sandra S. Beckwith
	:	Senior United States District Judge
vs.	:	
	:	
Michael Worley, *et al.*,	:	
	:	
Defendants.	:	
	:	

MEMORANDUM & ORDER

This matter is before the Court on the Motion for Summary Judgment filed by Defendants Michael Worley and Willy Dalid (Doc. No. 6). Also before the Court is Defendants' motion for sanctions. (Doc. No. 10). For the reasons set forth below, Defendants' motion for summary judgment is not well-taken and is **DENIED;** Defendants' motion for sanctions is not well-taken and is **DENIED.**

I. Background

This matter arises out of events that occurred while Plaintiff, Gerald Lindsly, was a pre-trial detainee at the Hamilton County Justice Center (HCJC) in Cincinnati, Ohio. Defendants Michael Worley and Willy Dalid worked as Hamilton County Sheriff's Office (HCSO) corrections officers at the HCJC. The HCSO, which is not a party to this lawsuit, operates the HCJC.

On the evening of August 3, 2006, Lindsly was arrested by Cincinnati police officers for breaking the window of a private residence. Lindsly, who suffers from mental illness, testified that he was experiencing a psychotic episode at the time.

After arresting Lindsly, the police brought him to the HCJC where he was processed and held overnight for his initial appearance before a Hamilton County judge the next day. Lindsly did not receive medication for his mental illness and testified that he continued to experience the psychotic episode throughout the night.

At around 8:30 a.m. the next morning, August 4, corrections officers took Lindsly to the HCJC identification section, Lincoln 14, to be photographed and fingerprinted before his court appearance. Deputy Melissa Kilday, the corrections officer in charge of security for Lincoln 14 that morning, testified that Lindsly acted in a "loud and aggressive" manner towards staff and other inmates while in Lincoln 14. Kilday further testified that she became concerned for Lindsly's safety and the safety of others in Lincoln 14 because of Lindsly's behavior. The decision was thus made to discontinue the identification process and return Lindsly to his cell. Either before or after Lindsly left Lincoln 14, one of the corrections officers decided that Lindsly should be placed in cell AH5, a cell used to hold individual inmates who must be separated from the general population.

During the trip between Lincoln 14 and cell AH5, Lindsly came under the escort of three corrections officers: Defendants Worley and Dalid, and Deputy Michael Lally. Worley testified that upon his joining the escort Lindsly "picked" him out, calling him "cancer" and saying that he was the reason Lindsly was sick. Worley also testified that Lindsly made additional strange comments, stating that he, Lindsly, was G.I. Joe and worked for NASA and the CIA. Besides these comments, Lindsly did not act in a physically aggressive manner towards the officers.

At 8:33 a.m. the party arrived at cell AH5 and a security camera located next to cell AH5 began to record their activities without sound. Shortly after arriving at the cell, Lindsly spit some green phlegm on to the hallway floor. Dalid told Lindsly he would have to clean up the phlegm and

then instructed a nearby inmate porter, Theodore Gentry, to hand him a towel. Dalid then gave the towel to Lindsly who knelt down and wiped up the phlegm.

What occurred next is the subject of dispute. The video images show Lindsly standing up and tossing the towel in an indeterminate direction after wiping up the phlegm. The camera, which is behind Lindsly, shows Dalid standing to Lindsly's left and Worley standing to Lindsly's right. Gentry is standing in between and slightly behind Dalid and Worley facing Lindsly. Worley testified that he believed, in the moment, that Lindsly had thrown the soiled towel directly at him. Gentry, however, testified that the towel was clearly thrown in his direction and that the towel hit the ceiling, suggesting that it was thrown in an upward direction. The towel ultimately landed in front of Gentry and did not hit any of the officers.

A split second later the video images show Dalid and Worley moving to grab Lindsly and Deputy Lally's hand reaching in from outside the frame towards Lindsly. Lindsly is then either forced to the floor by the officers or falls to the floor on his own. Once on the floor, Lindsly can no longer be seen by the security camera. For the next twenty-nine (29) seconds Lindsly is either outside the camera's view or is blocked from the camera's view by the bodies of the three corrections officers.

Gentry, who was standing a short distance away, testified that while Lindsly was on the ground he received a knee strike to his face and several blows to his body. Lindsly, who testified that he did not remember much of the episode, asserted that he was knocked unconscious by something during the altercation. In a "Jail Incident Report" (JIR) completed by Deputy Lally later that same day, he wrote: "Deputies Dalid, Worley and myself had to ground inmate Lindsley [sic]. Dep. Worley used a knee strike."

Worley, for his part, denied that he intentionally struck Lindsly in the face with his knee. When asked about this in his deposition, he testified: "Yeah, I bumped him with my knee, but it was not a strike by any means. It was an inadvertent -- just contact." Dalid also denied that he struck Lindsly with his knee. Both men further testified that they did not force Lindsly to the ground, but rather, that Lindsly fell to the ground on his own.

Lally, when asked about his JIR in his deposition, testified that after reviewing the video he concluded that Lindsly fell to the ground on his own and that his JIR was therefore incorrect . He also testified that he did not remember the knee strike and that he never actually *saw* it occur. Instead, he asserted that he *heard* a "thud" that he thought was a knee strike. To add further confusion, Theodore Gentry identified Lally as the officer that struck Lindsly in the face with his knee at his deposition. Gentry added that Lally was also the officer that administered a few knee strikes to Lindsly's body. This contravened Gentry's earlier identification of Worley as the officer who performed the knee strike to Lindsly's face during his interview with Lieutenant Warren Tudor of the HCSO internal affairs section.

After the aforementioned disputed off-camera events, the camera images then show Worley and Dalid dragging or carrying Lindsly into cell AH5 while Deputy Terry Harper, another corrections officer, holds open the cell door. Gentry testified that the two officers dragged Lindsly into the cell by his hair. The video images do not confirm or contradict Gentry's account.

Deputy Harper testified that once in cell AH5, Worley and Dalid wrestled with Lindsly before exiting. The times between the entry into and exit from the cell of Dalid and Worley were three and seven seconds respectively. None of the officers inspected Lindsly for injuries at that time.

Around 12:30 p.m. later that day Lindsly was taken by HCJC staff to the University of Cincinnati Hospital because of visible injuries to his face. At the hospital he was treated for a fracture to his right eye orbit in four places, a nasal fracture, and a mild corneal abrasion. According to Lindsly the injuries were caused during the incident with Worley and Dalid. Worley and Dalid deny this, contending that Lindsly's injuries were self-inflicted. In support they point to the testimony of Deputy Richard Wickman, another corrections officer, who testified that he observed Lindsly running "head-on" into his cell door multiple times about an hour after the incident outside cell AH5. In his deposition Lindsly denied that the injuries were self-inflicted.

Several individuals, in addition to Deputy Wickman, observed Lindsly after the incident. Gentry testified that he observed Lindsly through a cell window only a minute or two after the altercation and that Lindsly's face did not "look normal." Lindsly's public defender, Ravert Clark, visited Lindsly in his cell about fifteen minutes after the incident. Clark testified that he could observe "visible injuries" to Lindsly's face, but that he did not report these injuries to HCJC staff. Clark also testified that the injuries he observed were not as severe as those shown in a photo taken of Lindsly just prior to his admission to the hospital.

After learning of Lindsly's injuries that day, Sergeant Robert Menkhaus, the supervising officer, asked the officers involved about the incident and instructed them to complete JIR's detailing the events. A few days later an investigation was initiated by the HCSO internal affairs division. Lt. Warren Tudor, who was in charge of the investigation, interviewed numerous individuals, including Dalid, Worley, Lally, Gentry, and Lindsly. His report to Sheriff Simon Leis, Jr. of September 26, 2006, concluded that excessive force had been used by officers Worley and Dalid against inmate Lindsly, and that Lindsly's injuries caused by that use of force. As a result of

the report, Dalid and Worley received reprimands for using excessive force and for not immediately reporting the use of force to a supervisor.

Lindsly originally brought suit against Defendants Worley and Dalid on July 27, 2007. When Lindsly filed his original complaint he was committed to Summit Behavioral Healthcare as a result of having been found not guilty by reason of insanity of the charge for which he was arrested on August 3, 2006. At the time of his original complaint it was undisputed that Lindsly had not exhausted the administrative remedies available to him through the HCSO.

On August 28, 2008, Defendants filed a motion for summary judgment arguing, *inter alia*, that Plaintiff had failed to comply with the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e. The PLRA requires a "prisoner confined in any jail, prison, or other correctional facility" to exhaust his or her administrative remedies before bringing a § 1983 action in a federal court. Judge Spiegel, of this Court, granted Defendants' motion and dismissed the complaint without prejudice. Judge Spiegel reasoned that because Lindsly, while committed, remained under the jurisdiction of the state trial court pursuant to Ohio Revised Code § 2945.40, he was a "prisoner" within the meaning of the PLRA. Accordingly, Plaintiff's failure to exhaust his administrative remedies prior to filing suit mandated dismissal of his § 1983 claim. Judge Spiegel further declined to exercise supplemental jurisdiction over Plaintiff's state law claims. Plaintiff re-filed his Complaint against Defendants in this Court on May 26, 2009. At the time of re-filing Plaintiff was no longer committed to Summit and was not otherwise incarcerated.

Defendants' Motion raises four issues. First, Defendants assert that Plaintiff's failure to file a grievance with the HCSO while he was in custody requires dismissal of his complaint under the PLRA. Second, Defendants assert that they are protected by qualified immunity. Third, Defendants

assert that even if this Court finds that Defendants are not entitled to qualified immunity, they are nevertheless entitled to summary judgment on the factual question of whether Plaintiff's facial injuries were caused by Defendants' alleged unconstitutional use of force. Last, Defendants assert that this Court should not exercise supplemental jurisdiction over Plaintiff's state law claims upon a finding that his § 1983 claim is without merit.

II. Prison Litigation Reform Act

First, Defendants argue that the complaint is subject to dismissal because Plaintiff failed to exhaust the available administrative remedies before filing suit as required by the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a). Although the PLRA does require prisoners to exhaust available institutional administrative remedies before filing civil rights lawsuits, that requirement only applies to litigants who are incarcerated at the time of the filing of the suit. Cox v. Mayer, 332 F.3d 422, 423 (6th Cir. 2002); see also Greig v. Goord, 169 F.3d 165, 166-67 (2nd Cir. 1999)(holding that litigants that file prison condition lawsuits after their release from confinement are no longer "prisoners" for purposes of the PLRA's exhaustion requirement). In this case, Plaintiff was not incarcerated at the time he filed this lawsuit. Accordingly, he is not subject to the PLRA's exhaustion requirement. See Cox, 332 F.3d at 424 (stating the PLRA is not applicable to a plaintiff who is not confined in a jail, prison, or other correctional facility). Accordingly, the complaint cannot be dismissed for failure to exhaust administrative remedies.

III. Summary Judgment Standard of Review

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P.

56(c). The evidence presented on a motion for summary judgment is construed in the light most favorable to the non-moving party, who is given the benefit of all favorable inferences that can be drawn therefrom. United States v. Diebold, Inc., 369 U.S. 654 (1962). "The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986) (emphasis in original)

The Court will not grant summary judgment unless it is clear that a trial is unnecessary. The threshold inquiry to determine whether there is a need for trial is whether "there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonable be resolved in favor of either party." Anderson, 477 U.S. at 250. There is no issue for trial unless there is sufficient evidence favoring the non-moving party for a jury to return a verdict for that party." Id.

The fact that the weight of the evidence favors the moving party does not authorize a court to grant summary judgment. Poller v. Columbia Broad. Sys., Inc., 368 U.S. 464, 472 (1962). "[T]he issue of material fact required by Rule 56(c) . . . to entitle a party to proceed to trial is not required to be resolved conclusively in favor of the party asserting its existence; rather, all that is required is that sufficient evidence supporting the claimed factual dispute be shown to require a jury or a judge to resolve the parties' differing versions of the truth at trial." First Nat. Bank v. Cities Serv. Co., 391 U.S. 253, 288-89 (1968).

Moreover, although summary judgment must be used with extreme caution since it operates to deny a litigant his day in court, Smith v. Hudson, 600 F.2d 60, 63 (6th Cir. 1979), cert. dismissed, 444 U.S. 986 (1979), the United States Supreme Court has stated that the "[s]ummary judgment

procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed to 'secure the just, speedy and inexpensive determination of every action.'" Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986). According to the Supreme Court, the standard for granting summary judgment mirrors the standard for a directed verdict, and thus summary judgment is appropriate if the moving party establishes that there is insufficient evidence favoring the non-moving party for a jury to return a verdict for that party." Id. at 323; Anderson, 477 U.S. at 250.

Accordingly, summary judgment is clearly proper "against a party who fails to make a showing sufficient 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." Celotex Corp., 477 U.S. at 322. Significantly, the Supreme Court also instructs that the "plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion" against a party who fails to make that showing with significantly probative evidence. Id.; Anderson, 477 U.S. at 250. Rule 56(e) requires the non-moving party to go beyond the pleadings and designate "specific facts showing that there is a genuine issue for trial." Id.

Further, there is no express or implied requirement in Rule 56 that the moving party support its motion with affidavits or similar materials negating the opponent's claim. Id. Rule 56(a) and (b) provide that parties may move for summary judgment "with or without supporting affidavits." Accordingly, where the non-moving party will bear the burden of proof at trial on a dispositive issue, summary judgment may be appropriate based solely on the pleadings, depositions, answers to interrogatories, and admissions on file.

III. Analysis

Defendants move for summary judgment on Plaintiff's § 1983 claim of excessive force on the ground that they are entitled to qualified immunity. Defendants also move this Court to grant summary judgment in their favor on the factual issue of whether Plaintiff's facial injuries–the existence of which is not in dispute–were caused by Defendants.

A. Qualified Immunity

A public official is entitled to qualified immunity and thus shielded from suit under § 1983, for his action if his conduct does not violate a clearly established statutory or constitutional right of which a reasonable official would have known. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). The contours of the right must be sufficiently clear that a reasonable official would understand that what he was doing violates that right. Anderson v. Creighton, 483 U.S. 635, 640 (1987). The official, however, is only entitled to qualified immunity for actions taken in objective good faith within the scope of his duties. Id. at 849 n.34.

Determining a public official's entitlement to qualified immunity presents a two-step inquiry. First, the court must determine, judged in the light most favorable to the party asserting the injury, whether the facts alleged show that the officer's conduct violated a constitutional right. Saucier v. Katz, 533 U.S. 194, 201 (2001). If no constitutional right would have been violated on the facts alleged, the inquiry stops and the officer will be entitled to qualified immunity. Id. If a violation can be made out based on a favorable view of the pleadings, the court must determine whether the right at stake was clearly established. Id.

In determining whether a constitutional right is clearly established, the court must first look to decisions of the U.S. Supreme Court, then to decisions of the Sixth Circuit, and, finally, to decisions of other circuits. Walton v. City of Southfield, 995 F.2d 1331, 1336 (6th Cir. 1993) (citing

Daugherty v. Campbell, 935 F.2d 780, 784 (6th Cir. 1991)). It is only the extraordinary case that will require a reviewing court to look beyond Supreme Court and Sixth Circuit decisions. Id. The questions of whether the right alleged to have been violated is clearly established and whether the official reasonably could have believed that his conduct was consistent with the right the plaintiff claims was violated, are ones of law for the court. Id. However, if genuine issues of material fact exist as to whether the official committed the acts that would violate a clearly established right, then summary judgment is improper. Id.; see also Jackson v. Hoylman, 933 F.2d 401, 403 (6th Cir. 1991) (affirming district court's denial of summary judgment on the issue of qualified immunity where the parties' factual account of the incident differed).

When a defendant raises qualified immunity as a defense, as the Defendants have done in this case, the plaintiff bears the burden of demonstrating that the defendant is not entitled to qualified immunity. Everson v. Leis, 556 F.3d 484, 494 (6th Cir. 2009).

Plaintiff's only constitutional claim against Defendants Worley and Dalid is that they used excessive force against him during the incident in the hallway outside cell AH5. At the time of the incident Plaintiff had not been convicted of a crime, and was thus a pretrial detainee. As observed by the Sixth Circuit, "the Fourteenth Amendment's Due Process Clause . . . 'protects a pretrial detainee from the use of excessive force that amounts to punishment.'" See Leary v. Livingston County, 528 F.3d 438, 443 (6th Cir. 2008) (quoting Graham v. Connor, 490 U.S. 386, 395 n. 10 (1989)). To succeed on a claim of excessive force under the Fourteenth Amendment standard, a plaintiff "must show something more that *de minimis* force." Id.

With regard to the first step of the qualified immunity analysis, the Court concludes that the record, construed in Plaintiff's favor, demonstrates that Defendants used excessive force against

Plaintiff because there was no justification to use force at all. In arguing otherwise, Defendants generally construe the record in their own favor, which of course is not appropriate when moving for summary judgment. Defendants' brief and their deposition testimony state that, after he threw the towel, Plaintiff was backing away from the cell door and that he slumped to the floor when they stepped forward to escort him in. The JIR's filed by Defendant Dalid and by Deputy Lally state however, that the officers immediately "grounded" Plaintiff after he tossed the towel in Defendant Worley's direction. Plaint. Exs. I & Y. Additionally, Gentry, the inmate porter, testified that the officers "jumped right on" Plaintiff after he threw the towel. Gentry Dep. at 18. Thus, viewed in the light most favorable to Plaintiff, the record does not show that he was passively resisting the officers' attempt to move him into the cell by falling to the floor.

Moreover, the record, again construed in Plaintiff's favor, shows that he did not pose any safety threat to the officers. As just discussed, Plaintiff did not resist the officers' efforts to place him in the cell. Gentry testified that Plaintiff threw the dirty towel at the ceiling and not at the officers. Gentry Dep. at 17-18. Therefore, while there were some bodily fluids or mucous on the towel, according to Gentry's testimony, the officers were not really in danger of being hit by it. Additionally, Lt. Tudor's report on the incident concluded that there was no immediate threat to the officers' safety, that immediate use of force against Plaintiff was not warranted, and that verbal commands might have been sufficient to move Plaintiff into the cell. Plaint. Ex. K.

The Court momentarily pauses its analysis of qualified immunity question to address the admissibility of Lt. Tudor's internal affairs report on the incident. Defendants go to extraordinary lengths to denigrate Lt. Tudor's competence and professionalism in conducting his investigation into the incident. See Doc. No. 6 at 11 (calling Tudor's investigation "inept and incompetent"); Doc. No.

13, at 6 (stating that Tudor was "either a buffoon or had a particular animus against Deputy Worley and Dalid."). Despite these attacks, however, the Court finds that the report is admissible under Fed. R. Evid. 803(8). Federal Rule of Evidence 803(8) allows for the admission into evidence the reports of public offices or agencies, including "factual findings resulting from an investigation made pursuant to authority granted by law, unless the source of information or other circumstances indicate lack of trustworthiness." Moreover, conclusions and opinions stated in an investigative report are admissible under the public records exception as long as they are based on a factual investigation. Rainey v. Beech Aerospace Serv., Inc., 488 U.S. 153, 170 (1988). This Court has previously admitted reports on excessive use of force generated by an internal affairs investigation under Rule 803(8). See Nowell v. City of Cincinnati, No. 1:03-CV-859, 2006 WL 2619846, at *3-*4 (S.D. Ohio Sept. 12, 2006) (Dlott, J.). In determining whether the report is sufficiently trustworthy to be admitted, the trial court should consider: (1) the timeliness of the investigation upon which the report is based, (2) the special skill or experience of the investigators, (3) whether the agency held a hearing, and (4) possible motivational problems. Chavez v. Carranza, 559 F.3d 486, 496 (6th Cir. 2009).

In this case, Lt. Tudor's report meets the standards for admissibility under Rule 803(8). Lt. Tudor testified that he has been an internal affairs investigator since 1997 and that he has conducted over 500 investigations of corrections officers and that 80% of his investigations involve the use of force. Tudor Dep. at 20, 64, 74-75. Lt. Tudor also testified that he is familiar with the Sheriff Department's policy on the use of force. Id. at 75-76. Lt. Tudor conducted interviews of Plaintiff and Gentry within days of the incident; Tudor interviewed Defendants and Deputy Lally about five weeks after the incident and issued his final report six to seven weeks after the incident.

Therefore, the investigation was conducted in a timely manner. Compare with Chavez, 559 F.3d at 496 (investigation of El Salvadorian Truth Commission timely where it commenced seven months after Peace Accord signed). Lt. Tudor also reviewed the video tape of the incident as well as the incident reports and Plaintiff's medical records. Tudor Dep. at 61-62. Defendants' bare assertion that Lt. Tudor's report was biased is just that - a bare assertion. Defendants cite no evidence in the record that Lt. Tudor was biased. Having reviewed record, the Court finds that there is not the slightest hint or suggestion that Lt. Tudor's report was the product of bias. There was no hearing on the use of force; however, a hearing is not necessary when the other circumstances indicate the report is trustworthy. Chavez, 559 F.3d at 496. While Defendants criticize the report on the grounds that Lt. Tudor made some procedural errors in the course of his investigation,[1] those faults go to the weight of the report and not its admissibility. In consideration of all these factors, based on Lt. Tudor's training and experience, the timeliness of the investigation, and the absence of bias, the Court concludes that the report is admissible under Rule 803(8) and is probative evidence that Defendants used excessive force in this incident.

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[1] For instance, among other things, Defendants argue that Tudor failed to advise Dalid that he was a subject of the investigation, and not a witness, before interviewing him. Defendants also argue that Tudor used constitutionally deficient identification procedures when he asked Gentry to identify the officers involved in the incident and that he failed to interview other witnesses. Defendants disagree with Tudor's interpretation of the use of force policy and also complain that Tudor had not taken the annual training on use of force as required by department policy. In response the Court would just note that Lt. Tudor's recommendations for disciplinary action against Defendants for violating the use of force policy were based largely if not entirely on his report and that his recommendations were endorsed up the chain of command to the Sheriff. Therefore, the procedural defects identified by Defendants were insufficient to cause the Sheriff to reject Lt. Tudor's recommendations and, thus, at least some indication, in addition to the other factors discussed, that the report is reliable and admissible. Moreover, the Court is not aware of any authority, and Defendants have cited none, which indicates that Lt. Tudor was required to use identification procedures that comport with constitutional criminal procedure standards.

In summary, there is sufficient evidence in the record for a reasonable juror to conclude that Defendants used a excessive force against Plaintiff. Viewed in the light most favorable to Plaintiff, the record shows that he simply tossed the towel up in the air and that this action did not pose any safety or security threat to the Defendants. The internal affairs investigation concluded as much and also found that there was no need for the Defendants to immediately take Plaintiff to the ground for tossing the towel. Moreover, Plaintiff suffered more than *de minimis* injuries from being tackled by the Defendants. Gentry, the porter, testified that he observed visible injuries to Plaintiff's face, including blood, a swollen eye, and a nose that looked broken. Additionally, while Plaintiff's criminal trial counsel disagreed with the Gentry as to the severity of Plaintiff's injuries, he did at least agree that he observed an eye injury and dried blood on Plaintiff shortly after the incident. Clark Dep. at 56-57. Because Plaintiff did not pose any safety threat to the Defendants at the time, there was no legitimate governmental interest in using force against him. Morrison v. Board Of Trustees of Green Twp., 583 F.3d 394, 404-05(6th Cir. 2009)("[O]nce the detainee ceases to pose a threat to the safety of the officers or others, the legitimate government interest in the application of significant force dissipates."). Moreover, it was well-established by August 4, 2006, that an officer would violate a detainee's constitutional rights by applying force when the detainee did not pose a safety threat. See id. at 404 ("This Court has consistently held in light of the reasonableness standard that 'use of force after a suspect has been incapacitated or neutralized is excessive as a matter of law.'")(quoting Baker v. City of Hamilton, 471 F.3d 601, 607-08 (6th Cir.2006)); see also Phelps v. Coy, 286 F.3d 295, 302 (6th Cir. 2002)(observing that it was well-established in 1991 that gratuitous use of force against non-resisting detainee would be a constitutional violation); McDowell v. Rogers, 863 F.2d 1302, 1307 (6th Cir. 1988)("[O]ur court

has repeatedly found that a totally gratuitous blow with a policeman's nightstick may cross the constitutional line[.]'").

Accordingly, the Court concludes that Defendants are not entitled to summary judgment on the issue of qualified immunity. Consequently, Defendants' motion for summary judgment on the grounds of qualified immunity is not well-taken and is **DENIED.**

Defendants also move for summary judgment on the issue of the source of Plaintiff's eye and facial injuries. They argue that there is no evidence that they actually caused these injuries. As the foregoing discussion illustrates, however, there a significant factual questions concerning the source of Plaintiff's injuries. Accepting Gentry's testimony as a being true, Plaintiff suffered some sort of facial injuries as a result of being tackled by Defendants and Officer Lally. Moreover, Defendant Worley admitted that his knee came into contact with Plaintiff. Even if this contact was not intentional, it occurred during an incident in which the use of any force against Plaintiff was not justified. In other words, Defendants are responsible for any injuries they caused to Plaintiff when they took him to the floor without justification. Gentry also testified that Defendants "were beating him up . . . pretty bad" while Plaintiff lay balled up on the floor. Gentry Dep. at 16-17. Construing the record in Plaintiff's favor, there is evidence that both Defendants inflicted injuries to Plaintiff in this incident. The Court is not in a position to parse out the cause of each of Plaintiff's injuries on a motion for summary judgment. Moreover, this may be a case where Defendants are jointly responsible for causing a single, indivisible injury to Plaintiff. Harper v. Albert, 400 F.3d 1052, 1062 (7th Cir. 2005). Accordingly, Defendants' motion for summary judgment as to liability for Plaintiff's eye and facial injuries is not well-taken and is **DENIED.**

IV. Motion for Sanctions

Defendants also move for sanctions against Plaintiff's counsel pursuant to Rule 11 of the Federal Rules of Civil Procedure on the grounds that there is no evidence that they caused any injuries to Plaintiff. To the contrary, however, as the preceding discussion illustrates, there are substantial factual questions concerning whether Defendants' use of force against Plaintiff was justified as well as the cause of his injuries. Therefore, Rule 11 sanctions are not warranted because the complaint has a substantial basis in law and fact.

Accordingly, Defendants' motion for sanctions is not well-taken and is **DENIED.**

Conclusion

In conclusion, Defendants' motion for summary judgment and motion for sanctions are not well-taken and are **DENIED.**

IT IS SO ORDERED.

Date April 28, 2010

s/Sandra S. Beckwith
Sandra S. Beckwith
Senior United States District Judge