

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
CHARLOTTESVILLE DIVISION

FAYE BARNES,	)	
	)	Civil Action No. 3:12CV00053
Plaintiff,	)	
	)	
v.	)	<b><u>MEMORANDUM OPINION, FINDINGS</u></b>
	)	<b><u>OF FACT, AND</u></b>
	)	<b><u>CONCLUSIONS OF LAW</u></b>
GENE JOHNSON, et al.,	)	
	)	
Defendants.	)	By: Hon. Glen E. Conrad
	)	Chief United States District Judge
	)	

This case is presently before the court following a two-day bench trial. Faye Barnes, a former inmate of the Fluvanna Correctional Center for Women (“Fluvanna”), filed this civil rights action pursuant to 42 U.S.C. § 1983, alleging that the defendant, former Corrections Lieutenant Johnathan Bland, used excessive force against her while she was incarcerated, in violation of the plaintiff’s Eighth Amendment rights.\* Finding that the plaintiff failed to prove her case by a preponderance of the evidence, the court will rule in favor of the defendant.

**Procedural Background**

The plaintiff filed her first amended complaint on October 11, 2012. Although the defendant was personally served with a summons and copy of the complaint, he failed to file a responsive pleading as required by the Federal Rules of Civil Procedure. By court order, a Clerk’s Entry of Default was entered against the defendant on August 21, 2013. For good cause shown, the court later set aside the entry of default. With leave of court, the defendant filed a motion for summary judgment to which the plaintiff responded. Finding several genuine disputes of material fact, the court denied the defendant’s motion. The parties waived conduct of a trial by jury, and a two-day bench trial was held on July 15, 2014 and July 16, 2014.

## Summary of the Evidence

In addition to the plaintiff's disciplinary records, informal complaints, and medical records from Fluvanna, the plaintiff's medical bills, and several letters from the plaintiff to her long-time friend, Dorothy Thomasson, the evidence introduced at trial consisted of testimony from ten witnesses:

The plaintiff, Faye Barnes, testified that on September 30, 2010, while she was incarcerated in Building 5 at Fluvanna, she confronted her cellmate about touching her personal property. She explained that both women were removed from the cell as a result of the altercation. Ms. Barnes recalled being taken to Mr. Bland's office, where he told her that he was going to lock her up. Ms. Barnes testified that Mr. Bland handcuffed her behind the back using one set of cuffs. She stated that she was five feet tall and weighed 250 pounds at the time, and explained that her arms are short. Ms. Barnes recalled that Mr. Bland had difficulty pulling her arms behind her back to make her wrists meet. She also recalled telling Mr. Bland during the handcuffing process, "Something's not right, something's wrong." She felt a burning under her armpit, as if hot water were running from her neck to her lower back. Ms. Barnes testified that when she told Mr. Bland about the pain, he became frustrated, like she had gotten on his last nerve, and he told the plaintiff, "Ms. Barnes, I got this."

Ms. Barnes recalled that two yard officers escorted her to the segregation unit in handcuffs. Ms. Barnes testified that upon her arrival to segregation, she was examined by Ms. Harlow, a registered nurse. She testified that she told Ms. Harlow about her arm pain but that Ms. Harlow instructed her to make a sick call request. Ms. Barnes further stated that she made

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\* The plaintiff also named ten other defendants, including additional correctional officers and members of Fluvanna's medical staff. The claims against those defendants have been fully resolved, and Johnathan Bland is the only defendant remaining in the case.

such a request between October 1 and October 4, 2010, but acknowledged that no such request was reported in her medical file. Ms. Barnes recalled asking Ms. Harlow about why she didn't have a medical profile allowing her to be cuffed in the front. After Ms. Harlow completed her medical evaluation, the plaintiff recalled being handcuffed behind the back again with one set of handcuffs. Ms. Barnes testified that she was handcuffed behind the back with one set of handcuffs on several occasions during her time in segregation. On most occasions the cuffing caused her pain, but one correctional officer was able to handcuff her using one set of cuffs without causing any discomfort. Although Ms. Barnes made additional complaints of pain and discomfort caused by handcuffing after she was put in segregation, her complaints attributed that pain to later cuffing incidents, rather than to her encounter with Mr. Bland.

Ms. Barnes further testified that prior to September 30, 2010, there was no "unpleasantness" between her and Mr. Bland. She explained that she had made verbal complaints to Mr. Bland about other officers committing sexual misconduct in her wing. She recalled that he listened to her and told her that he would take appropriate action. She believed that Mr. Bland was a decent person and trusted him to address the situation. Ms. Barnes testified that she did not know or suspect that Mr. Bland was also engaging in sexual misconduct and only learned that he was involved in such behavior at a later time.

The defendant, Johnathan Bland, testified that on September 30, 2010 he was the building lieutenant for Building 5. Mr. Bland recalled that on that date, he received notice of a loud disturbance in the plaintiff's wing. He explained that both Ms. Barnes and her cellmate were removed from their cell to prevent the situation from escalating. Mr. Bland explained that he and his captain reviewed the rapid eye footage of the incident in which Ms. Barnes appeared to approach her cellmate in a threatening manner. He testified that as a result of this behavior, Ms.

Barnes was assigned to the segregation unit. Mr. Bland stated that Ms. Barnes was not restrained when she was brought to his office to be interviewed following the altercation. Mr. Bland also testified that he did not handcuff Ms. Barnes at any point on September 30, 2010. He stated that as the building lieutenant, he would order his staff to handcuff an inmate when necessary. Mr. Bland recalled that Ms. Barnes was unrestrained when he left her with another officer so that he could speak with her cellmate in a separate office. Mr. Bland recalled that when he returned to his office, Ms. Barnes was waiting in the vestibule, but he could not recall whether she was handcuffed at that time. Mr. Bland testified that Ms. Barnes did not appear to be in pain. Despite a prison policy requiring offenders assigned to segregation to be restrained while outside of their cells, Mr. Bland admitted that he instructed the yard officers not to handcuff Ms. Barnes for transport across the yard. He did not know whether she was ultimately cuffed prior to transport.

Mr. Bland further testified that prior to September 30, 2010, he had a cordial relationship with Ms. Barnes. He did not recall Ms. Barnes complaining to him about the sexual misconduct occurring in her wing or threatening to bring the misconduct to the attention of prison supervisors. He admitted that he previously pled guilty to having inappropriate sexual contact with an inmate at Fluvanna. He testified that on September 30, 2010, Mr. Bland did not suspect that Ms. Barnes knew about his own inappropriate conduct.

Crystal Gravely, a Fluvanna inmate who served as Ms. Barnes's aide beginning in November 2010, testified that she observed Ms. Barnes in constant neck pain. Sherine Wilson, a Fluvanna inmate who knew Ms. Barnes for many years, testified that Ms. Barnes's physical condition and demeanor deteriorated significantly after her time in segregation.

Dr. R. Scott Graham, the plaintiff's treating neurosurgeon, testified by deposition that he

performed a discectomy on Ms. Barnes on March 7, 2012. In the course of his treatment, Dr. Graham was unable to determine the cause of Ms. Barnes's neck injury. Dr. Terrance Baker, a family practitioner, opined by deposition that the technique used by correctional officers to handcuff the plaintiff with her hands behind her back significantly contributed to Ms. Barnes's neck and shoulder injuries.

Dorothy Thomasson, Ms. Barnes's long-time friend, testified that she and the plaintiff communicated by letter while the plaintiff was in segregation. In a letter from Ms. Barnes to Ms. Thomasson dated October 4, 2010, Ms. Barnes wrote: "You know, Dottie, the Lt. that locked me up had a childish gleam in his eyes. He looked like he had done something that will give him recognition. He was beside himself for nothing. He did it to get me out of the building . . . ." In that letter, Ms. Barnes did not complain that Mr. Bland had handcuffed her or that she was injured as a result. Ms. Thomasson testified that when she visited Ms. Barnes in December 2010, she observed the plaintiff in noticeable pain.

Officer Vicki Booker testified that on September 30, 2010, she responded to reports of a loud disturbance in the plaintiff's wing. Officer Booker explained that upon arriving at the plaintiff's cell, she observed Ms. Barnes and her cellmate arguing face-to-face. Officer Booker and another officer escorted the unrestrained plaintiff to Mr. Bland's office, and then Officer Booker continued to make her rounds. Officer Booker could not recall whether Ms. Barnes was cuffed when she briefly returned to Mr. Bland's office, but she testified that Ms. Barnes was handcuffed when she was escorted across the yard to segregation. Officer Booker did not observe the plaintiff in any pain or distress.

Laurel Jones, a former shift commander at Fluvanna, testified that she did not recall anything about September 30, 2010. Ms. Jones further testified that although she made herself

regularly available to hear inmates' complaints, Ms. Barnes never reported to her that sexual misconduct was occurring in Building 5. Rather, Ms. Jones explained, she and the other supervisors learned of the sexual misconduct just one day before the story broke in the media.

Brenda Harlow, the registered nurse who examined Ms. Barnes on September 30, 2010, reported that Ms. Barnes was in no distress upon her arrival at the segregation unit. Ms. Harlow testified that the plaintiff did not complain of any injury to her arm, neck, shoulder or back during the exam. Further, Ms. Harlow testified that her physical examination of Ms. Barnes revealed no bruises, lacerations, or any other injury. Ms. Harlow recalled that Ms. Barnes complained about not having a medical profile permitting her to be handcuffed in front. She testified that Ms. Barnes did not complain about being forced into handcuffs prior to the exam.

#### **Applicable Law**

Every inmate has the right under the Eighth Amendment to serve her term of imprisonment without enduring “cruel and unusual punishment” at the hands of prison officials. U.S. Const. amend VIII. It is well established that “the unnecessary and wanton infliction of pain . . . constitutes cruel and unusual punishment forbidden by the Eighth Amendment.” Hudson v. McMillian, 503 U.S. 1, 6 (1992) (quoting Whitley v. Albers, 475 U.S. 312, 319 (1986)). When determining whether a prison official has violated the Eighth Amendment’s prohibition against “cruel and unusual punishment,” a court must analyze both an objective component—“whether the . . . injury inflicted on the inmate was sufficiently serious”—and a subjective component—“whether the prison official acted with a sufficiently culpable state of mind.” Williams v. Benjamin, 77 F.3d 756, 761 (4th Cir. 1996).

In the excessive force context, the objective component focuses on “the nature of the force,” which must be “nontrivial.” Wilkins v. Gaddy, 559 U.S. 34, 39 (2010). The subjective

component focuses on the officer's state of mind. Specifically, the inmate must establish that the prison official applied force "maliciously and sadistically for the very purpose of causing harm," rather than "in a good faith effort to maintain or restore discipline." Hudson, 503 U.S. at 6 (internal quotation marks omitted). In short, the "core judicial inquiry [is] . . . the nature of the force—specifically, whether it was nontrivial and was applied . . . maliciously and sadistically to cause harm." Wilkins, 559 U.S. at 39 (internal quotation marks omitted).

In determining whether a prison official acted with malice, the court may consider: (1) the need for application of force; (2) the relationship between the need and the amount of force that was used; (3) the extent of the injury; (4) the threat reasonably perceived by the responsible official based on the facts known to him; and (5) any efforts made to temper the severity of a forceful response. Hudson, 503 U.S. at 7. A court may also consider evidence of any prior relationship between the parties and whether an animus between them exists. Simms v. Jackson, 91 F.3d 133, \*4 n.3 (4th Cir. 1996) (Table).

### **Findings of Fact and Conclusions of Law**

1. The court finds that prior to September 30, 2010, Ms. Barnes and Mr. Bland enjoyed a cordial relationship. The court finds that although Ms. Barnes made verbal complaints to Mr. Bland about the bad conduct of other officers, Ms. Barnes neither knew nor suspected that Mr. Bland was conducting himself inappropriately.
2. The court also finds that Mr. Bland did not suspect that Ms. Barnes knew about his inappropriate conduct. Indeed, the court finds that Ms. Barnes did not accuse Mr. Bland or complain about his conduct. Stated differently, the court finds that there is no evidence that Mr. Bland had cause or reason to retaliate against Ms. Barnes. The court finds that on September 30, 2010, the plaintiff was transferred from general population to

the segregation unit following an altercation between the plaintiff and her cellmate.

Based on prison policy and the testimony of Officer Booker, the court finds that the plaintiff was handcuffed prior to being transported to the segregation unit. The court finds that the defendant personally handcuffed the plaintiff, and that, despite the plaintiff's complaints of pain, the defendant forced Ms. Barnes's arms behind her back to handcuff her using just one set of cuffs. Additionally, the court finds that this application of force injured the plaintiff's arm, neck, and cervical spine.

3. On these facts, the court concludes that the plaintiff has failed to prove by a preponderance of the evidence that the defendant used excessive force against her, in violation of the Eighth Amendment. Specifically, the court concludes that the plaintiff has failed to show that the defendant acted "maliciously and sadistically for the very purpose of causing harm." Hudson, 503 U.S. at 6. Overall, the Hudson factors favor the defendant. The need for the application of force is clear. Ms. Barnes was handcuffed because she had recently been involved in an altercation with her cellmate and was about to be transported to segregation. The relationship between the need for the application of force and the amount of force used is reasonable given the plaintiff's stature. As a five-foot-tall, 250-pound woman with short arms, some force would reasonably be necessary to pull the plaintiff's arms behind her back and place her in handcuffs. The extent of the plaintiff's injury as a result of the September 30, 2010 cuffing is difficult to measure. Ms. Harlow testified that Ms. Barnes did not complain to her about any pain caused by Mr. Bland's handcuffing procedure, and Ms. Harlow reported no sign of physical injury during her examination of the plaintiff. Further, although Ms. Barnes clearly knew how to file complaints and grievances, she never reported the September 30, 2010 cuffing

incident. This suggests that the pain and injury were not so severe as to show that Mr. Bland harmed Ms. Barnes with malice. The fact that prison policy requires inmates assigned to segregation to be handcuffed while outside of their cells supports the conclusion that Mr. Bland reasonably perceived that leaving Ms. Barnes unrestrained might threaten the safety and security of the institution. Although Mr. Bland may not have taken extra care to temper the pain or discomfort caused by the handcuffing procedure, there is no indication that his response was more severe than necessary. In fact, the plaintiff testified that most correctional officers caused her at least some pain or discomfort whenever they restrained her using just one set of handcuffs. Finally, there is no evidence of animus or a prior bad relationship between Ms. Barnes and Mr. Bland. Rather, the plaintiff testified that there was no unpleasantness between them, and the defendant described their relationship as cordial.

4. As the court noted at trial, a plaintiff's claim can rise only as high as the plaintiff's own evidence. Here, the court concludes that—at most—the plaintiff's evidence establishes that Mr. Bland viewed the altercation between Ms. Barnes and her cellmate as a welcome opportunity to remove Ms. Barnes from his charge, and that he became frustrated when Ms. Barnes complained about pain during the handcuffing procedure. While Mr. Bland may have responded apathetically to Ms. Barnes's complaints of pain, the plaintiff has failed to show that the defendant caused that pain "maliciously and sadistically for the very purpose of causing harm." Frustration and apathy do not rise to the level of malice.



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FAYE BARNES,	)	
	)	Civil Action No. 3:12CV00053
Plaintiff,	)	
	)	
v.	)	<b><u>FINAL ORDER</u></b>
	)	
	)	By: Hon. Glen E. Conrad
GENE JOHNSON, et al.,	)	Chief United States District Judge
	)	
Defendants.	)	

This matter was tried before the court without a jury on July 15, 2014 and July 16, 2014.

For the reasons set forth in the accompanying memorandum opinion, it is hereby

**ORDERED**

that judgment is entered in favor of the only remaining defendant, Johnathan Bland. The matter is **STRICKEN** from the active docket of the court.

The Clerk is directed to send certified copies of this order and the accompanying memorandum opinion to all counsel of record.

ENTER: This 23rd day of July, 2014.

/s/ Glen E. Conrad  
Chief United States District Judge