

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

COREY SMITH,)	
Plaintiff,)	
)	Civil Action No.: 7:14cv00002
)	
)	
v.)	
)	<u>REPORT AND RECOMMENDATION</u>
OFFICER S. TAYLOR, et al.,)	By: PAMELA MEADE SARGENT
Defendants.)	United States Magistrate Judge
)	

The plaintiff, Corey Smith, an inmate proceeding pro se and housed at Red Onion State Prison, (“Red Onion”), located in Pound, Virginia, filed this action for monetary damages and injunctive relief under 42 U.S.C. § 1983. This case is before the undersigned magistrate judge on referral, pursuant to 28 U.S.C. § 636(b)(1)(B). In his Complaint, Smith raised claims against various correctional officers employed by the Virginia Department of Corrections, (“VDOC”), assigned to Red Onion, alleging a violation of his rights under the United States Constitution, as well as state law. In particular, Smith alleged that the defendants used excessive force against him, denied him medical attention, verbally threatened him and retaliated against him by denying him recreation privileges for one month. (Docket Item No. 1).

Following the court’s ruling on a prior motion for summary judgment, the following claims and defendants remain: Smith’s Eighth Amendment claim against Officer Taylor for use of excessive force; his Eighth Amendment claim against Officer Lawson for failure to intervene; his state law claims alleging assault and

battery against Officer Taylor; and his state law claims alleging negligence against Officers Taylor and Lawson and Sergeant Miller for failure to provide medical treatment for his injured hand. An evidentiary hearing was held before the undersigned on May 12, 2015. Based on the evidence presented at this hearing, I find that the defendants violated neither Smith's Eighth Amendment rights nor his state law rights. Therefore, I recommend that the court enter judgment in favor of the remaining defendants on Smith's remaining claims.

I. Facts

On September 19, 2013, Smith was housed in administrative segregation in the C Building, C123 Pod, cell C-201 at Red Onion. At that time, he was pursuing a separate § 1983 action, alleging that in July 2012, while being transported from Wallens Ridge State Prison, ("Wallens Ridge"), to Red Onion, he was beaten repeatedly by Wallens Ridge corrections officers and was shocked multiple times with an electric belt, all in violation of his Eighth Amendment rights. He also alleged that other Wallens Ridge corrections officers failed to intervene to protect him and that a nurse at Red Onion failed to provide adequate medical care to treat his resulting injuries. This prior lawsuit has nothing to do with Officers Taylor or Lawson or Sergeant Miller, the defendants in the case currently before the court. *See Smith v. Ely, et al.*, Case No. 7:13cv00329.

The following is a summary of Smith's version of the events that occurred on September 19, 2013. Smith alleges that early on that morning, when Officers Steven Taylor and Richard Lawson approached his cell to escort him to outside recreation, Taylor stated he should not allow Smith to go because of all the "paperwork" he had been filing. Despite an argument ensuing between them,

Smith alleges that Officers Taylor and Lawson escorted him outside to a recreation cage. Shortly after being placed in the cage, however, Officer Taylor began harassing Smith about the previously filed lawsuit inquiring whether he intended to drop it. When Smith said he would not do so, Officer Taylor cut Smith's recreation short and ordered him to back up to be restrained to be escorted back to his cell. Smith claims that Officer Taylor applied the handcuffs behind his back, while Officer Lawson applied the leg irons. The cuffs were "extremely tight," and when Smith complained about this, Officer Taylor stated "I will do a whole lot more than that when I get you out." According to Smith, upon exiting the cage, Officer Taylor employed "mixed martial arts wrist locks,"¹ which caused him great pain. Smith complained to Officer Taylor that he was hurting him, but to no avail. When Smith asked Officer Lawson for help, Lawson stated that Smith deserved everything he got, a comment which Smith assumed was directed at his filing of the previous lawsuit. According to Smith, Officer Taylor continued using the wrist locks the entire way back to Smith's cell, except for the time they were waiting for the door to the pod to be opened. Smith testified that he was "screaming" in pain. Once back in his cell, he asked Officers Taylor and Lawson for medical treatment for his injuries, which he claimed included a swollen and bruised left wrist with scratches and scrapes, numb fingers on the left hand and a left thumb that was busted and bleeding under the nail. However, Smith said both officers refused, and Officer Taylor stated "I hope it's broken," referring to Smith's wrist.

Smith testified that he, thereafter, placed a piece of paper in his cell window stating that he was assaulted by Officer Taylor and requesting medical treatment for his injuries. Smith testified that this paper remained in his cell door window for

¹ Smith described these wrist locks as yanking, jerking and twisting the cuffs on his wrists.

approximately 30 minutes before an individual from the law library instructed him to remove it, as it was a violation of institutional policy. Before the paper was removed, however, Sergeant Eric Miller approached Smith's cell door while performing rounds, and Smith showed Miller his injuries, informed Miller he was assaulted by Officer Taylor and requested to see a nurse. However, Smith said that Miller refused his request, saying he did not want Smith's injuries to be documented. According to Smith, Miller stated "You better go lay down or I will beat your ass." Smith also testified that Sergeant Miller stated that Officer Ely, a defendant in Smith's pending lawsuit, was a "hero" for shocking him with the electric belt. When Smith observed Nurse Gilbert making afternoon pill pass some time after 3:00 p.m., he advised her of what had occurred and requested medical treatment. She checked his wrists, noted injuries, administered Tylenol and scheduled an appointment with the institutional physician. Smith testified that, when he saw the doctor a week later, his wrist appeared the same, with bruising, swelling and redness, but there no longer was bleeding or blood under his thumb nail. The doctor ordered x-rays, which were negative for fractures, and he prescribed Tylenol.

Inmate Derrick Lynn Bratcher also testified by video conferencing at the hearing on Smith's behalf. Bratcher was housed in cell C-211, directly above Smith's cell, on September 19, 2013. He testified that as Smith was being escorted back into the C Building from recreation, Officer Taylor had Smith's hand bent up on the left, and Smith was complaining of being in pain. Bratcher stated that he did not see Taylor yanking Smith's arms up and down. In fact, Bratcher testified he could not see where Taylor's hands were, so he assumed it was Taylor bending Smith's left hand causing him pain. Bratcher testified that he heard Smith request medical treatment, but the officers refused. He stated that Smith did not see a nurse

until pill time. Bratcher also testified that he had heard Sergeant Miller make threats to Smith, but he could not recall the exact statement.

The defendants' version of events differs from Smith's on critical points. Officers Taylor and Lawson testified that no conversation or argument regarding Smith's previously filed lawsuit or his filing of "paperwork" occurred at his cell prior to being escorted to recreation on September 19, 2013. In fact, they testified that they were unaware of the existence of such lawsuit at that time and that they were unaware of Smith ever having filed any previous complaints against them. They testified that they escorted Smith to the recreation cage without incident, but shortly after being placed in the cage, he became verbally threatening to Officer Taylor. In particular, he threatened to "put a knife in [Taylor] or have some of his people do it for him." Officer Taylor reported this threat to Sergeant Miller, and the decision was made to return Smith to his cell. Both Officers Taylor and Lawson specifically denied using excessive force on Smith, and neither recalled Smith complaining about the handcuffs being too tight, screaming in pain or requesting medical attention at any time as a result of being injured due to the placement of the handcuffs. Officer Taylor specifically denied yanking the restraints up and down, and he denied physically manipulating Smith's hands or wrists in any manner. Officer Lawson, likewise, testified that Officer Taylor did not move Smith's arms, noting that, if he had, Lawson's arms would have moved as well because he, too, was holding onto Smith. According to Officer Lawson, Smith exhibited no signs of being in pain. Lawson testified that he did not hurt Smith, nor did he threaten to hurt him. He further testified that he did not hear Officer Taylor threaten Smith regarding his filing of complaints or the lawsuit.

Sergeant Eric Miller provided testimony that Smith showed him no injuries, made no complaints of being assaulted during the escort from the cage to his cell, nor did he request medical attention for any alleged injuries sustained as a result thereof. He stated that if Smith had requested medical treatment, he would have called the nurse. Miller also did not recall any paper in Smith's cell door window when he made rounds on September 19, 2013. He testified that Officer Taylor informed him that Smith had threatened staff, and Miller described Smith as quite upset and angry about being pulled from recreation. Sergeant Miller denied making threatening statements to Smith, and he testified that he was unaware of Smith's pending lawsuit on September 19, 2013. Miller never spoke with Smith again regarding the events of that day.

Lieutenant Steven Franklin, the Lieutenant of the C Building on September 19, 2013, testified that he did not specifically recall having any contact with Smith on that day, but he made rounds daily, which consisted of approaching every cell door. On September 19, 2013, he made rounds at 2:00 p.m. with Unit Manager Greg Swiney. No one ever advised Lieutenant Franklin that Smith needed medical attention, and he would have seen injuries on Smith if they existed. He observed no such injuries. Lieutenant Franklin testified that Smith never requested a form seeking emergency medical treatment at any time between September 14 and September 24, 2013.

Other evidence admitted at the hearing included Rapid Eye video surveillance footage, log book entries for Smith's pod, Smith's relevant medical records and a Penalty Offer signed by Smith. A review of the video evidence of the C Recreation Yard, the C Building Entrance, the C Building Vestibule and the actual pod where Smith was housed revealed the following. First, despite Smith's

contention that Officer Taylor applied the handcuffs on him, it was Officer Lawson who did so. Next, Officers Taylor and Lawson escorted Smith from his cell to the recreation cage at approximately 7:08 a.m. At approximately 7:18 a.m., Officers Taylor and Lawson began the procedure to remove him from the cage and escort him back to his cell. The video shows that Officer Lawson was standing on Smith's right side with one hand on Smith's upper arm and his other hand down by his own waist. Officer Taylor was standing to Smith's left side with his left hand on Smith's shoulder and his right arm on Smith's bicep or forearm area. At approximately 7:20 a.m., video of the three entering the C123 Vestibule shows that Officer Taylor is not jerking or yanking on the cuffs or on Smith's arms or wrists, and Smith's shoulders, hands and arms are not moving up and down. There also is no indication that Smith is screaming or shouting in pain. Once in front of Smith's cell, the video again reveals that he is not screaming in pain or otherwise indicating that he is in pain.

The defendants also offered evidence of log book entries made by Officers Taylor and Lawson on September 19, 2013, for Smith's pod. (Docket Item No. 43-4.) Testimony established that these log books, which record the daily activities of the pod, including any incidents or disruptive behavior, are required to be kept for every pod. An entry by Officer Taylor states that at approximately 7:20 a.m. Smith had become verbally disruptive, claiming he could have Taylor "stabbed, beat or shit down." (Docket Item No. 43-4 at 1-2.) This entry further indicates that no force was used against Smith. (Docket Item No. 43-4 at 2.) A later entry by Officer Lawson between the times of 9:41 and 10:15 states that Smith's water was turned off due to his threats to flood the pod. (Docket Item No. 43-4 at 2.) It was further noted that Smith would be offered water and toilet water every two hours. (Docket Item No. 43-4 at 2.) An entry between the times of 2:15 and 2:44 states that Taylor

offered water to Smith and to flush his toilet, but Smith refused. (Docket Item No. 43-4 at 3.) Officer Taylor did file a Disciplinary Offense Report following the events of September 19, 2013, charging Smith with threatening bodily harm. (Docket Item No. 43-2 at 1.) Smith accepted a Penalty Offer, which Smith conceded at the hearing is an admission of guilt. Smith further testified that he understood accepting the Penalty Offer to be an admission of guilt at the time he signed it on September 19, 2013. (Docket Item No. 43-2 at 2.) This Penalty Offer form states, in part, that by signing, Smith had been advised of his rights to enter into or to refuse it. He acknowledged that by signing the Penalty Offer, he was pleading guilty to the specified offense, and he further acknowledged that his acceptance thereof was totally voluntary. (Docket Item No. 43-2 at 2.) Smith offered no explanation as to why he signed the Penalty Offer if he was not, in fact, guilty of the offense charged, and he did not threaten Taylor.

Smith's medical records included a Nursing Evaluation Tool completed by Nurse Gilbert on September 19, 2013. (Docket Item No. 43-1 at 5.) These notes reflect that Smith complained of pain, numbness and swelling in the left wrist and left thumb. (Docket Item No. 43-1 at 5.) He advised Nurse Gilbert that his injuries occurred when corrections officers were applying handcuffs. (Docket Item No. 43-1 at 5.) However, the note reflects that the corrections officer advised that Smith was irritated and making threats toward staff. (Docket Item No. 43-1 at 5.) Nurse Levinia Mullins, LPN at Red Onion, and Vicky Phipps, RN, Director of Nursing at Red Onion, testified that it is policy to document all visible injuries, and this record indicated only slight swelling and redness in the left wrist area, with no indication of bruising or a nail injury. (Docket Item No. 43-1 at 5.) Smith was able to move his fingers freely, but complained of pain. (Docket Item No. 43-1 at 5.) Nurse Gilbert prescribed Motrin and scheduled an appointment with the institutional

physician on September 24, 2013. (Docket Item No. 43-1 at 5.) When Smith saw the institutional physician, Dr. Smith, on September 24, 2013, he complained of left thumb tenderness, but there was no indication of bruising or swelling, no deformity was noted, the skin was intact, and he had free range of movement of the thumb. (Docket Item No. 43-1 at 4.) On September 30, 2013, a Nursing Evaluation Tool shows that Smith had placed a sick call stating “wrist hurts and want to get meds renewed.” (Docket Item No. 43-1 at 3.) Nurse Mullins dispensed Motrin and scheduled an appointment with the physician for October 3, 2013. (Docket Item No. 43-1 at 3.) On October 3, 2013, Dr. Smith saw Smith for complaints of left thumb pain at the base. (Docket Item No. 43-1 at 2.) There was no deformity and no swelling, Smith had a free range of movement of the left thumb, and there was no note of bruising. (Docket Item No. 43-1 at 2.) An October 4, 2013, Nursing Evaluation Tool, signed by Nurse Gilbert, shows that a sick call was made to Smith’s cell related to his complaint of a left thumb problem due to the September 19, 2013, incident. (Docket Item No. 43-1 at 1.) However, he refused the sick call because he already had seen the doctor the previous day. (Docket Item No. 43-1 at 1.) X-rays of Smith’s left hand, dated November 5, 2013, were negative. (Docket Item No. 43-1 at 7.)

Lastly, Special Investigator James Wiandt testified that, during the course of his investigation into Smith’s allegations, he instructed Institutional Investigator McQueen to preserve and download any relevant video of the September 19, 2013, incident. Wiandt took Smith’s statement during a face-to-face interview in the pod office. He denied Smith informed him of any other witnesses to the incident, stating that, if he had, he would have interviewed them. In addition to Smith’s interview, Wiandt’s investigation consisted of interviewing Officers Taylor and Lawson, Sergeant Miller and Lieutenant Franklin, as well as reviewing the relevant

video footage and Smith's medical records. As a result of his investigation, Wiandt found nothing to support Smith's allegations. Wiandt testified that whenever force is used on an inmate, an Incident Report must be filed, and failure to do so could result in the appropriate VDOC employee's termination. No such Incident Reports were filed regarding any use of force against Smith on September 19, 2013.

II. Analysis

Smith alleges that Officer Taylor's actions on September 19, 2013, constituted a use of excessive force in violation of the Eighth Amendment to the United States Constitution, and Officer Lawson's failure to intervene, likewise, constituted an Eighth Amendment violation. He further alleges that Officer Taylor's actions constituted the torts of assault and battery under Virginia law. Smith alleges that Officers Taylor's and Lawson's and Sergeant Miller's failures to provide the requested medical treatment for his injured hand constituted negligence under Virginia law.

The Eighth Amendment to the United States Constitution not only prohibits excessive sentences, but it also protects prison inmates from inhumane treatment and conditions while imprisoned. *See Williams v. Benjamin*, 77 F.3d 756, 761 (4th Cir. 1996). The unnecessary and wanton infliction of pain by a prison official through the use of excessive force upon an inmate has been clearly established as a violation of the Eighth Amendment's prohibition on cruel and unusual punishment for a number of years. *See Hudson v. McMillian*, 503 U.S. 1, 5 (1992); *Whitley v. Albers*, 475 U.S. 312, 319 (1986). The Eighth Amendment also requires prison officials to take reasonable measures to guarantee the safety of inmates. *See*

Farmer v. Brennan, 511 U.S. 825, 832 (1994); *Hudson v. Palmer*, 486 U.S. 517, 526-27 (1984).

The determination of whether the use of force by a prison official violates the Eighth Amendment includes both a subjective and objective component. *See Williams*, 77 F.3d at 761 (citing *Wilson v. Seiter*, 501 U.S. 294, 301-02 (1991)). Not every malevolent touch by a prison guard amounts to a deprivation of constitutional rights. *See Hudson*, 503 U.S. at 9 (citing *Johnson v. Glick*, 481 F.2d 1028, 1033 (2d Cir. 1973)). To meet the objective component in an excessive force case, an inmate must show that the force used was “nontrivial,” *Wilkins v. Gaddy*, 559 U.S. 34, 39 (2010), given that “contemporary standards of decency always are violated ... whether or not significant injury is evident.” *Hudson*, 503 U.S. at 9. “This is not to say that the ‘absence of serious injury’ is irrelevant to the Eighth Amendment inquiry.” *Wilkins*, 559 U.S. at 37 (quoting *Hudson*, 503 U.S. at 7). In fact, the extent of the injury may suggest that “‘the use of force could plausibly have been thought necessary’ in a particular situation” or “provide some indication of the amount of force applied.” *Wilkins*, 559 U.S. at 37 (quoting *Hudson*, 503 U.S. at 7). For example, “[a]n inmate who complains of a [mere] ‘push or shove’ that causes no discernible injury almost certainly fails to state a valid excessive force claim.” *Wilkins*, 559 U.S. at 37 (quoting *Johnson*, 481 F.2d at 1033). As *Wilkins* clarified, it is the nature of the force “that ultimately counts” and provides the “core judicial inquiry” in an excessive force case. 559 U.S. at 37, 38. In particular, courts must consider “whether [the force] was nontrivial and ‘was applied ... maliciously and sadistically to cause harm.’” *Wilkins*, 559 U.S. at 39 (quoting *Hudson*, 503 U.S. at 7).

To meet the subjective component in an excessive force case, the inmate must show that the prison official applied force “maliciously and sadistically for the very purpose of causing harm.” *Whitley*, 475 U.S. at 320-21. The inquiry under the subjective standard is “whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” *Hudson*, 503 U.S. at 7. The Supreme Court in *Whitley* set out several factors which should be considered in determining whether prison officials acted maliciously and sadistically. In particular, the court should consider:

- 1) The need for the application of force,
- 2) The relationship between that need and the amount of force used,
- 3) The threat “reasonably perceived by the responsible officials,” and
- 4) “any efforts made to temper the severity of a forceful response.”

Williams, 77 F.3d at 762 (citing *Whitley*, 475 U.S. at 321).

Based on the evidence before the court, I find that Smith has failed to meet his burden of proving either the subjective or the objective component of an excessive force claim. With regard to the objective component, I find that the video evidence demonstrates that Officer Lawson placed handcuffs on Smith for the purpose of returning him to his cell. The act of placing handcuffs on an inmate is not an objectively malicious or sadistic act designed to cause harm. Furthermore, despite Smith’s allegations that Taylor used “mixed martial arts wrist locks,” both Taylor and Lawson deny such allegations, and such claims are not borne out by the video evidence. Moreover, Smith’s medical records demonstrate that, when he was evaluated by Nurse Gilbert at approximately 3:40 p.m. on the day at issue, he had only slight swelling and slight redness in the left wrist area, with no indication of

bruising or a nail injury. He was able to move his fingers freely and was treated with Motrin. When Smith saw Dr. Smith on September 24, 2013, Dr. Smith noted no bruising or swelling, no deformity, intact skin and free range of movement of the thumb. X-rays of the left hand were negative. When Smith again saw Dr. Smith on October 3, 2013, he complained of left thumb pain, but there was no deformity or swelling, he had a free range of motion of the left thumb, and there also was no note of bruising. Smith sought no further medical treatment for his injuries resulting from the alleged September 19, 2013, assault. Thus, I find that the extent of Smith's injuries does not suggest that a nontrivial amount of force was used by either Taylor or Lawson when placing the cuffs or while escorting him back to his cell from the recreation cage on September 19, 2013.

Regarding the subjective component, I find that the evidence shows that the handcuffs were placed on Smith in a good-faith effort to maintain discipline, not maliciously and sadistically for the very purpose of causing harm. Both Officers Taylor and Lawson denied hurting Smith or threatening to hurt him. The video evidence does not support Smith's claim that Officer Taylor employed wrist locks or manipulated his arm in any way. The video also does not support Smith's claim that he was screaming in pain. Based on the evidence and the testimony offered at the hearing, I find that the only force used was the routine application of handcuffs to Smith for purposes of escorting him back to his cell. It is evident that such application of force is necessary to promote security and safety during the escort. The court notes the near-contemporaneous log book entry by Officer Taylor, stating that no use of force was employed against Smith, as well as the absence of any Incident Reports filed by Officer Taylor or Lawson. Further bolstering a finding that the handcuffs were not utilized maliciously and sadistically for the very purpose of causing harm, is the testimony from both officers that they had

experienced no problems with Smith in the past, and both were unaware of any complaints or grievances he had ever filed related to them. Moreover, only hours after the alleged incident, Officer Taylor offered Smith water and to flush his toilet after the water to his cell was turned off. Thus, there is no evidence from which to conclude that these officers held any animus toward Smith. Based on all of this evidence, I find that the handcuffs were not applied to Smith maliciously or sadistically for the very purpose of causing harm, but in a good-faith effort to maintain or restore discipline.

Central to this court's determination is Smith's acceptance of the Penalty Offer to the charge of threatening bodily harm. Despite his repeated denials that he threatened to stab Officer Taylor while in the recreation cage on September 19, 2013, Smith admitted that he voluntarily accepted this Penalty Offer, which he conceded was an admission of guilt to the offense. Therefore, I find Smith's argument that Officer Taylor removed him from the cage based on his refusal to drop the previously filed lawsuit, incredible. Instead, I find credible the defendants' contention that Smith's recreation was cut short due to his verbal threats to harm Taylor. It is for these reasons that I find that Smith has failed to establish an Eighth Amendment excessive force claim, and I recommend that the court enter judgment in favor of Officer Taylor on this claim. Given the finding that no excessive force was used while escorting Smith back to his cell from the recreation cage, I find that Smith has not established a claim against Officer Lawson for failure to intervene, and I recommend that the court enter judgment in Officer Lawson's favor on this claim.

As for the state law assault and battery claims against Officer Taylor, I find that they, too, fail. To state a claim under Virginia law for assault, Smith must

show an act “intended to cause either harmful or offensive contact with another person or apprehension of such contact, and that creates in that other person’s mind a reasonable apprehension of an imminent battery.” *Koffman v. Garnett*, 574 S.E.2d 258, 261 (Va. 2003). “The tort of battery is an unwanted touching which is neither consented to, excused nor justified.” *Koffman*, 574 S.E.2d at 261. Each of these is an independent tort and may exist without the other. *See Koffman*, 574 S.E.2d at 261. Smith makes no allegation of any apprehension of an imminent battery. Thus, I find that Smith has failed to establish a claim for assault against Officer Taylor, and I recommend that the court enter judgment in his favor on this claim. As for the battery claim, I find that, even if the application of the cuffs were considered an unwanted touching, according to Operating Procedure, (“OP”) 420.2, “Use of Restraints and Management of Offender Behavior,” at a minimum, offenders like Smith, who are assigned to special housing, should be restrained with their hands behind their backs whenever the offender is outside the cell or other secured area. (Docket Item No. 44-1 at 4.) The purpose of OP 420.2 is to “establish[] guidelines for the control and management of offender behavior through the use of restraining devices. ...” (Docket Item No. 44-1 at 1.) According to OP 420.2, “[c]orrectional facilities must control and manage offender behaviors for the safety of the public, employees, and offenders. This may be preemptive control ... or ... control imposed due to the actions or threat of actions by offenders within the facility.” (Docket Item No. 44-1 at 1.) Here, the evidence shows that handcuffs were utilized for preemptive control while escorting Smith from the recreation cage to his cell. I find that, upon entering Red Onion, Smith consented to the ordinary use of handcuffs during escorts in unsecured areas, and I find that the use of the handcuffs was justified for the purpose of controlling and managing his behavior for the safety of the public, employees and offenders. That

being the case, I find that Smith's battery claim against Officer Taylor fails, and I recommend that judgment be entered in Officer Taylor's favor on this claim.

That leaves Smith's state law claims for negligence against Officers Taylor and Lawson and Sergeant Miller. Under Virginia law, Smith must show that the defendants had a duty that they breached and that damages were proximately caused by that breach. *See Atrium Unit Owners Ass'n v. King*, 585 S.E.2d 545, 548 (Va. 2003). Here, Smith argues that the three remaining defendants were negligent in refusing his requests for medical treatment for his injured wrist. First, for reasons stated herein, I find incredible Smith's contentions that he was screaming in pain. I also find incredible his claim that he requested medical treatment which was denied by Officers Taylor and Lawson and Sergeant Miller. All three of these defendants denied that Smith ever made such a request, and all three testified that, if need be, they would have secured such treatment for Smith. Also, Miller denied ever seeing a piece of paper in Smith's cell door window stating that he had been assaulted by Officer Taylor, and he denied that Smith showed him any injuries or requested medical assistance. Smith conceded that placing a paper on the cell door window constituted an institutional violation, but admitted he was not charged with any such violation, despite a VDOC employee allegedly ordering its removal. I do not find Inmate Bratcher's testimony regarding Smith's requests for medical treatment credible. In particular, I note that Bratcher's testimony as to how Taylor inflicted injury on Smith conflicts with Smith's own testimony. Thus, for these reasons, I find that Smith's negligence claims against these three defendants fail, and I recommend that the court enter judgment in their favor on these claims.

However, should the court find Smith's contentions that these defendants denied him medical care credible, he still has not established a negligence claim

for the following reasons. Prison officials do have a duty to secure adequate medical care for inmates with objectively sufficiently serious medical needs. *See Estelle v. Gamble*, 429 U.S. 97, 105 (1976). Nevertheless, even assuming that Smith's injuries were objectively sufficiently serious and that Officers Taylor and Lawson and Sergeant Miller breached their duties to obtain adequate medical treatment for Smith, he has demonstrated no damages proximately caused by such a breach. Once Smith saw a nurse at his cell at 3:40 p.m. that same day, he had only some slight swelling and redness to the left wrist area with no indication of bruising or a nail injury. Approximately one week later, there was no indication of bruising or swelling, no deformity was noted, the skin was intact, and he had free range of movement of the left thumb. On September 30, 2013, Smith complained of wrist pain, for which Nurse Mullins prescribed Motrin. On October 30, 2013, despite Smith's complaint of pain at the base of the left thumb, there was no deformity or swelling, no bruising was noted, and Smith had a free range of movement. X-rays of Smith's left hand, dated November 5, 2013, were negative.

It is for all of these reasons that I find that Smith has failed to establish claims for negligence against Officers Taylor and Lawson and Sergeant Miller, and I recommend that judgment be entered in their favor on these claims.

For all of the reasons stated herein, I find that Smith has failed to show that the defendants' actions on September 19, 2013, constituted violations of the Eighth Amendment, state law assault or battery or state law negligence. Therefore, I recommend that the court enter judgment in favor of all of the defendants on all of Smith's claims.

PROPOSED FINDINGS OF FACTS AND CONCLUSIONS OF LAW

As supplemented by the above summary and analysis, the undersigned now submits the following formal findings, conclusions and recommendations:

1. Smith was escorted from his cell to the recreation cage by Officers Taylor and Lawson on the morning of September 19, 2013;
2. Smith was removed from the cage by the same officers and returned to his cell after threatening bodily harm to Officer Taylor;
3. Officer Lawson placed handcuffs on Smith to return him to his cell;
4. The amount of force used was trivial and was not applied maliciously and sadistically to cause harm, but in a good-faith effort to maintain or restore discipline;
5. Smith has failed to establish an Eighth Amendment excessive force claim against Officer Taylor;
6. Therefore, Smith also has failed to establish an Eighth Amendment failure to intervene claim against Officer Lawson;
7. Smith does not allege any apprehension of an imminent battery and, therefore, he has failed to establish a state law claim for assault against Officer Taylor;
8. Upon entering Red Onion, Smith consented to the ordinary use of handcuffs during escorts in unsecured areas, and the use of the handcuffs was justified for the purpose of controlling and managing his behavior for the safety of the public, employees and offenders; therefore, he has failed to establish a state law claim for battery against Officer Taylor; and
9. Even if Smith's contention that he was screaming in pain and that he requested medical treatment from Officers Taylor and Lawson and Sergeant Miller is deemed credible, he has failed to establish negligence claims against them, as he has failed to show damages proximately caused by a breach of their duty to provide him with adequate medical care.

RECOMMENDED DISPOSITION

Based on the above-stated reasons, I recommend that the court grant judgment in the defendants' favor on all of Smith's claims.

Notice to Parties

Notice is hereby given to the parties of the provisions of 28 U.S.C. § 636(b)(1)(C):

Within fourteen days after being served with a copy [of this Report and Recommendation], any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed finding or recommendation to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence to recommit the matter to the magistrate judge with instructions.

Failure to file written objection to these proposed findings and recommendations within 14 days could waive appellate review. At the conclusion of the 14-day period, the Clerk is directed to transmit the record in this matter to the Honorable Glen E. Conrad, Chief United States District Judge.

The Clerk is directed to send copies of this Report and Recommendation to all counsel of record.

DATED: June 2, 2015.

/s/ Pamela Meade Sargent
UNITED STATES MAGISTRATE JUDGE