

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

ROBERT LEWIN,)	
)	
Plaintiff,)	Civil Action No. 7:00cv00674
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
COMMONWEALTH OF VIRGINIA,)	
<u>et al.</u>,)	By: Samuel G. Wilson,
)	Chief United States District Judge
Defendants.)	

Plaintiff Robert Lewin, proceeding pro se, brings this action for injunctive and monetary relief under 42 U.S.C. §1983 against the Commonwealth of Virginia (“Commonwealth”) and former correctional officer J.D. St. Clair, alleging that, while an inmate of Botetourt Correctional Unit #25 (“BCU”), St. Clair used excessive force in violation of Lewin’s Eighth Amendment rights. This court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343. This matter is before the court on Defendants’ motion for summary judgment. When deciding a motion for summary judgment, the court must consider the facts, and the inferences to be drawn from those facts, in the light most favorable to the party opposing the motion. See Smith v. Virginia Commonwealth University, 84 F.3d 672, 675 (4th Cir. 1996) . Summary judgment is proper only where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c). For the following reasons, the court will dismiss Lewin’s claims for injunctive relief, grant the Commonwealth’s motion for summary judgment, and deny St. Clair’s motion for summary judgment.

I.

As a preliminary matter, the court concludes that Lewin's claims for injunctive relief are either moot or improper. Generally, claims for injunctive relief become moot when the conditions adversely affecting the plaintiff no longer exist. See Williams v. Griffin, 952 F.2d 820, 823 (4th Cir. 1991); see also Magee v. Waters, 810 F.2d 451, 452 (4th Cir. 1987) (holding that the transfer of a prisoner rendered the prisoner's claim for injunctive relief moot). Here, Lewin is seeking injunctive relief in the form of release from incarceration and protection from retaliation from other correctional officers at BCU. However, Lewin has since been transferred from BCU to Dillwyn and then to PCU. Therefore, any danger of retaliatory measures by other BCU correctional officers has been removed. Because Lewin is no longer subject to the conditions for which he seeks injunctive relief, transfer and/or release from incarceration is improper and his request will be denied.

II.

The court also grants the Commonwealth's motion for summary judgment because the Commonwealth is not a proper defendant for an action brought under 42 U.S.C. § 1983. "Neither States nor state officials acting in their official capacity are "persons" within the meaning of 42 U.S.C. § 1983." Will v. Michigan Dep't of State Police, 491 U.S. 58, 58 (1989). Therefore, all claims against the Commonwealth will be dismissed.¹

¹ The court also notes that St. Clair may not be sued in his official capacity. However, St. Clair may be sued in his individual capacity.

III.

The court next addresses Lewin's claim for monetary damages against St. Clair in his individual capacity. First, St. Clair asserts that he is entitled to qualified immunity. In the alternative, St. Clair asserts that he is entitled to summary judgment as a matter of law because Lewin's injuries were de minimis, and therefore not actionable under 42 U.S.C. § 1983.

Lewin and St. Clair have submitted conflicting affidavits describing the incident. Lewin alleges the following. On December 5, 1999, Lewin went to get a drink at a water fountain. St. Clair was standing between Lewin and the water fountain. Lewin looked at St. Clair and then walked around him. When Lewin finished drinking, St. Clair was standing over him and asked him if he had a problem. Lewin responded, "Man, get out of my house." (See Def.'s Mem. Supp. Summ. J., Ex. 1, Enclosure B). St. Clair then grabbed Lewin by the front of his shirt and slammed him into the steel security door. A third person opened the steel door. When the door opened, St. Clair slammed Lewin into a concrete wall.² The combined impacts caused abrasions and severe bruising to Lewin's back and ribs.³ Lewin also alleges that he experienced extreme pain when he attempted to lift his arm.⁴

² After the incident, BCU officials filed an official incident report. The report listed the incident as "Use of unnecessary force." The report listed St. Clair as the "initiator," and Lewin as the "recipient." (See Def.'s Mem. Supp. Summ. J., Ex. 1, Enclosure A.)

³The court notes that the morning after the incident, Lewin admits that he hit himself with a deodorant bottle to make the injuries appear worse. However, according to Lewin, the pictures and the medical report predate his self-inflicted injuries. (See Def.'s Mem. Supp. Summ. J., Ex. 1, Enclosure B.)

⁴A prison nurse prepared a medical report after the incident. The report documented all of the bruises and abrasions, including Lewin's complaint of pain when trying to lift his arm. However, the examiner noted that there was no swelling or deformity in the shoulder area and both sides looked symmetrical. (See Def.'s Mem. Supp. Summ. J., Ex. 2, Enclosure A.)

In contrast, St. Clair alleges the following. On December 5, 1999, St. Clair conducted a dorm count. After St. Clair completed the dorm count, Lewin approached him and stated, “You need to get out of my house!” St. Clair then asked Lewin if he was making a threat. Lewin approached St. Clair to within three feet and repeated his prior statement. St. Clair then grabbed Lewin’s arm and shirt to escort him away from the other inmates. Lewin began to resist, and St. Clair pushed him against a grill door. St. Clair then gained control of the situation and placed Lewin in a segregation cell.

Defendants are entitled to qualified immunity if they demonstrate that their official actions did not violate any clearly established statutory or constitutional rights of which a reasonable person would have been aware. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). When dealing with qualified immunity at the summary judgment stage, the court first must determine whether the plaintiff has alleged the violation of a clearly-established constitutional right. Pittman v. Nelms, 87 F3d 116, 119 (4th Cir. 1996). If the plaintiff has satisfied the first requirement, then the court must determine whether the defendants knew or should have known that their conduct was illegal. See id. Thus, the court must determine whether St. Clair knew, or a reasonable prison guard in the same situation should have known, that the amount of force used in the situation would violate Lewin’s right to be free from excessive punishment.

First, the court finds that Lewin has alleged a violation of a clearly-established constitutional right. It is clearly established that the Eighth Amendment prohibits prison officials from subjecting a prison inmate to an excessive use of force. E.g., Whitley v. Albers, 475 U.S. 312 (1986).

The court also finds that a reasonable prison guard in the same situation should have known that the force used against Lewin was excessive and therefore illegal. In assessing

allegations of excessive force, the court considers: (i) whether the force was needed in the questioned situation; (ii) the relationship between the need of force and the amount actually used; (iii) the extent of the injury inflicted; and (iv) whether the force was applied in a good faith effort to restore discipline or whether it was applied to inflict pain. King v. Blankenship 636 F.2d 70 (4th Cir. 1980). According to Lewin, St. Clair's attack was unprovoked, and the situation did not require the use of force. (See Def.'s Mem. Supp. Summ. J., Ex. 1, Enclosure B.) Lewin suffered significant injuries as a result of the use of force. (See Def.'s Mem. Supp. Summ. J., Ex. 1, Enclosure B). Considering the facts in the light most favorable to Lewin, the court holds that St. Clair is not entitled to qualified immunity as a matter of law.

In addition to asserting the defense of qualified immunity, St. Clair argues that, because Lewin's injuries were de minimis he is entitled to summary judgment. Generally, an inmate cannot prevail on a claim of excessive force under 42 U.S.C. § 1983 if the injuries sustained were de minimis. Norman v. Taylor, 25 F.3d 1259, 1263 (4th Cir. 1994) (holding that a swollen thumb was a de minimis injury). Determining whether a sustained injury rises above the threshold level of de minimis requires a case by case analysis. Watford v. Bruce, 126 F.Supp.2d 425 (E.D.Va. 2001).

Lewin alleged in his affidavit that he sustained bruised ribs, bruises and abrasions on his back, and severe discomfort when he attempted to lift his arm. One of the bruises was described in a medical report as measuring approximately four by five inches. (Def.'s Mem. Supp. Summ. J., Ex. 2, Enclosure A). Viewing these injuries in the light most favorable to Lewin, the court concludes that Lewin's injuries are not de minimis, and therefore do not provide a basis for granting summary judgment.

VI.

For the reasons discussed, the court grants the Commonwealth of Virginia's motion for summary judgment. In addition, the court dismisses Lewin's claims for injunctive relief. The court also concludes that St. Clair is not entitled to qualified immunity if Lewin's allegations are true. Finally, because genuine issues of material fact exist, St. Clair's motion for summary judgment is denied.⁵

Enter: This _____ day of June, 2001.

CHIEF UNITED STATES DISTRICT JUDGE

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⁵ The court notes that outstanding discovery motions exist. The court will address these motions in a later opinion.

