Rogers v. Femminello

United States District Court for the Southern District of Florida

February 13, 2025, Decided; February 14, 2025, Entered on Docket

CASE NO. 2:23-cv-14112-ROSENBERG

Reporter
2025 U.S. Dist. LEXIS 27187 *

JERALD LEE ROGERS, Plaintiff, v. DANIEL FEMMINELLO, et al., Defendants.

Counsel: [*1] For Daniel Femminello, Fort Pierce Police Department, Gil, Fort Pierce Police Department, Pulliam, Fort Pierce Police Department, Defendants: Patricia Maria Rego Chapman, LEAD ATTORNEY, Dean Ringers Morgan & Lawton P.A., Orlando, FL.

Jerald Lee Rogers, Plaintiff, Pro se, Fort Pierce, FL.

Judges: ROBIN L. ROSENBERG, UNITED STATES DISTRICT JUDGE.

Opinion by: ROBIN L. ROSENBERG

Opinion

ORDER GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

THIS CAUSE comes before the Court on three separate Motions for Summary Judgment, each filed on November 1, 2024, by Defendants Daniel Femminello ("Femminello") [ECF No. 39]; Javier Gil ("Gil") [ECF No. 41]; and James Pulliam ("Pulliam") [ECF No. 43]. *Pro se* Plaintiff Jerald Lee Rogers ("Plaintiff") did not file any response to the Motions by the November 15, 2024 deadline. On November 19, 2024, the Court ordered Plaintiff to show cause why he had not responded by November 29, 2024 [ECF No. 45]. Plaintiff responded with a one-page letter that did not address any specific facts or arguments in Defendants' Motions or supportive materials [ECF No. 46]. Accordingly, the Court treats the facts set forth in Defendants' Statements of Material Facts [ECF Nos. 40, 42, 44] as admitted by Plaintiff. [*2] *See* [ECF No. 45]. The Motions are ripe for review. The Court has considered the Motions, the record, and the applicable law. For the reasons set forth below, the Motions are **GRANTED**.

BACKGROUND[1]

On November 29, 2022, Femminello, an officer for the City of Fort Pierce Police Department ("FPPD"), responded to a call from dispatch to the corner of Avenue D and North 13th Street in Fort Pierce, Florida, pursuant to a request for assistance from St. Lucie County Fire Rescue ("Rescue") in dealing with a combative rescue patient [ECF No. 40 p. 1]. Although Rescue's call was originally to Femminello, Pulliam arrived at the scene first as a back-up officer, and Femminello arrived at the scene second [ECF No. 40 p. 2, No. 44 pp. 1-2]. Gil, also responding to a call from dispatch, arrived at the scene after Pulliam and Femminello [ECF No. 42 p. 1]. On the scene, Femminello was advised by Rescue that they had received a call for service regarding a man—Plaintiff—who had run into a nearby convenience store complaining that he was bleeding internally [ECF No. 40 p. 2]. Rescue advised Femminello that they had asked Plaintiff what was wrong and he reported that he was bleeding in his stomach, but [*3] that when they attempted to place Plaintiff on the stretcher, he began threatening physical violence if they touched him, at which Rescue called FPPD [ECF No. 40 p. 2]. Rescue advised Pulliam that Plaintiff had a history of psychiatric disorders and was known to be combative [ECF No. 44-1 p. 1].

Femminello and Pulliam then made contact with Plaintiff, who was lying in a field [ECF No. 40 p. 2, No. 44 p. 2]. Pulliam immediately recognized Plaintiff from an incident the evening prior, when Plaintiff was armed with a knife and acting aggressively towards patrons in a convenience store [ECF No. 44 p. 2]. Femminello asked Plaintiff what was going on, to which Plaintiff

[1] The facts relevant to Defendants' Motions are drawn from Defendants' Statements of Material Facts ("SOMF") and their accompanying exhibits [ECF Nos. 40, 42, 44]. Each Defendant has incorporated their co-defendants' SOMF's by reference, to the extent applicable. *See* [ECF No. 40 p. 1 n.2]; [ECF No. 42 p. 1 n.2]; [ECF No. 44 p. 1 n.2].

began "speaking incoherently, stating he was bleeding in his stomach and to touch him would be a federal offense" [ECF No. 40 p. 2]. Plaintiff "stated if they touched him, he would 'wrap him up like a present, sign sealed and delivered' and that he would 'fuck them up'" [ECF No. 40 p. 2]. Femminello attempted to ascertain what was wrong with Plaintiff, but Plaintiff continued to respond incoherently and issue threats of violence if he was touched [ECF No. 40 p. 2]. When Gil arrived at the scene, he immediately recognized Plaintiff [*4] from previous encounters he had with him, including at least one previous incident where Plaintiff was "Baker Acted" [ECF No. 42 p. 2].[2] Pulliam was also aware of Plaintiff's previously being "Baker Acted" at the time of the underlying incident [ECF No. 44 pp. 2-3].

Femminello and Pulliam agreed that Plaintiff needed to be "Baker Acted," as Plaintiff appeared to need medical attention and was in a manic state while threatening harm to others, such that he was a danger to himself and everyone around him [ECF No. 40 p. 3, No. 44 p. 4]. Gil also agreed with the other officers that Plaintiff needed to be "Baker Acted" [ECF No. 42 p. 2]. Femminello and Pulliam both believed Plaintiff needed to be secured and transported safely to Lawnwood Hospital [ECF No. 40 p. 3, No. 44 p. 4]. Femminello and Pulliam attempted to handcuff Plaintiff in order to secure him and the scene for Plaintiff's protection and the safety of responding officers and Rescue personnel and to effectuate Plaintiff's safe transport to Lawnwood Hospital [ECF No. 40 p. 3]. Pulliam took Plaintiff's left arm, and Femminello gripped Plaintiff's right arm and placed a handcuff on Plaintiff's right wrist [ECF No. 40 p. 3].

As soon [*5] as the handcuff was placed on Plaintiff's right wrist, he began to physically resist [ECF No. 40 p. 3]. Gil "jumped in and attempted to control Plaintiff's free left arm," while Pulliam and Femminello attempted to control his right arm, which "now had the half-attached handcuff that could be swung around and become a weapon" [ECF No. 40 p. 3, No. 42 p. 3]. Aside from his attempt to hold down Plaintiff's left arm and hand, Gil had no physical involvement with Plaintiff throughout the encounter [ECF No. 42 p. 4]. When Plaintiff began to thrust his hips upward in an attempt to move and/or sit up, Femminello began losing his grip on the other half of the handcuffs [ECF No. 40 p. 3]. Femminello, concerned that if Plaintiff managed to break free the handcuff would cause harm to one of the officers, struck Plaintiff in the stomach with less than full force using a non-closed-fist of his non-dominant hand [ECF No. 40 p. 4]. Femminello was attempting to gain Plaintiff's compliance, and was actively struggling to maintain control over Plaintiff's handcuffed wrist and prevent him from getting up [ECF No. 40 p. 4]. Due to Plaintiff's large size and active resistance, the officers were unable to [*6] roll Plaintiff onto his stomach to effectively handcuff him [ECF No. 40 p. 4].

During the struggle, Plaintiff "managed to get his right hand in between [Femminello's] legs and began to pinch his left testicle, causing [Femminello] pain" [ECF No. 40 p. 4]. In an effort to stop Plaintiff from pinching his testicle and gain his compliance, Femminello again struck Plaintiff in the stomach with less than full force using a non-closed-fist of his non-dominant hand [ECF No. 40 pp. 4-5]. Also during the struggle, Plaintiff made multiple, repeated attempts to bite Pulliam, despite instructions to stop [ECF No. 44 p. 5]. After being instructed to stop attempting to bite Pulliam, Plaintiff continued to attempt to bite Pulliam, and Pulliam "felt Plaintiff's teeth scrape his fingers [ECF No. 44 p. 5]. In response to the bite, Pulliam "delivered a quick face strike with his non-dominant, left hand, and again instructed him to stop biting him" [ECF No. 44 p. 6].

Concluding that additional backup was required to handcuff Plaintiff, Pulliam and Femminello pivoted from attempting to roll Plaintiff over, and instead removed the half-attached handcuff from Plaintiff's right wrist to prevent its use as a [*7] weapon [ECF No. 40 p. 5]. Once the handcuff was removed, Pulliam and Femminello continued to hold Plaintiff down to prevent him from harming himself or others, while Plaintiff continued to thrust, jerk, and thrash, hitting and grabbing both Pulliam and Femminello, punching and trying to bite Pulliam [ECF No. 40 p. 5-6, No. 44 p. 6]. Plaintiff did not respond to or comply with any commands given by the officers [ECF No. 40 p. 6].

Because Plaintiff was not calming down, Rescue personnel, "on their own accord," injected Ketamine into Plaintiff's right thigh to prevent further resistance and allow the officers on the scene to safely restrain Plaintiff and have him safely transported to Lawnswood Hospital [ECF No. 40 p. 5, No. 44 p. 7]. Once the Ketamine took effect, Plaintiff relaxed, and Femminello immediately

[2] "The Florida Mental Health Act," or "The Baker Act," permits involuntary examination at a receiving facility if there is reason to believe that the person has a mental illness and meets certain criteria due to that mental illness. *See* § 394.463, Fla. Stat. Defendants consistently refer to a person's being subjected to involuntary examination under this law as being "Baker Acted."

ceased his restraint efforts, whereupon Plaintiff was handcuffed by the other officers on the scene and placed on a stretcher [ECF No. 40 p. 6]. No force was used on Plaintiff once he was subdued and secured [ECF No. 40 p. 6]. Plaintiff was then safely taken to Lawnwood Hospital [ECF No. 40 p. 6].

The attempt to secure and handcuff Plaintiff lasted roughly six minutes in total [ECF [*8] No. 40 p. 6]. Femminello did not observe any injuries to Plaintiff after he was restrained and placed on the stretcher [ECF No. 40 p. 6]. Femminello went to Lawnwood Hospital and saw Plaintiff after the incident; Femminello observed no injuries and took photographs of Plaintiff [ECF No. 40 p. 6, No. 40-1 pp. 8-10]. No injuries were reported by St. Lucie County Fire Department [ECF No. 40 p. 6]. Femminello did not forcefully punch Plaintiff or otherwise administer any force beyond what was necessary and reasonable to restrain Plaintiff and keep him from hurting himself or others and did not witness any other officers doing so [ECF No. 40 pp. 6-7]. Plaintiff was never prevented from breathing or speaking, and no officers choked him or knelt on his neck [ECF No. 40 p. 7]. Pulliam did hold Plaintiff's head and face to the side in an effort to restrain Plaintiff and keep him pinned down to negate Plaintiff's attempts to headbutt and bite the officers [ECF No. 40 p. 7]. Plaintiff made no comment about his religion, religious beliefs, a religious practice in which he was engaged, or anything else regarding religion during the encounter with the officers [ECF No. 8, No. 44 p. 9].

On April 21, [*9] 2023, the Court received and docketed Plaintiff's *pro se* Complaint against Femminello, Pulliam, Gil, and St. Lucie County EMS Officers, alleging excessive force under the Fourth Amendment [ECF No. 1]. On June 8, 2023, the Court screened the Complaint under 28 U.S.C. § 1915A and permitted Plaintiff's excessive force claims against Femminello, Pulliam, and Gil, and a First Amendment retaliation claim against Femminello specifically, to proceed [ECF No. 5]. On November 1, 2024, Femminello, Gil, and Pulliam each filed their own Motions for Summary Judgment [ECF Nos. 39, 41, 43], and accompanying SOMF's [ECF Nos. 40, 42, 44]. Plaintiff made no response to any of these Motions, nor a November 19, 2024 Order from this Court directing Plaintiff to show cause why he had not responded [ECF No. 45], except a one-page letter, signed November 25, 2024, that stated that Plaintiff did not admit Defendants' "claims," that Plaintiff "lack[s] the knowledge to represent [him]self," and "[t]he Defendants know the truths to what happened that day" [ECF No. 46]. The matter is ripe for review.

LEGAL STANDARD

Summary judgment, pursuant to Federal Rule of Civil Procedure 56(a), "is appropriate only if 'the movant shows that there is no genuine issue as to any material fact and the movant is [*10] entitled to judgment as a matter of law.'" *Tolan v. Cotton*, 572 U.S. 650, 134 S. Ct. 1861, 1866, 188 L. Ed. 2d 895 (2014) (per curiam) (quoting Fed. R. Civ. P. 56(a)). "By its very terms, this standard provides that 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, 247-48, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). An issue is "genuine" when a reasonable trier of fact, viewing all of the record evidence, could rationally find in favor of the nonmoving party in light of his burden of proof. *Harrison v. Culliver*, 746 F.3d 1288, 1298 (11th Cir. 2014). And a fact is "material" if, "under the applicable substantive law, it might affect the outcome of the case." *Hickson Corp. v. N. Crossarm Co.*, 357 F.3d 1256, 1259-60 (11th Cir. 2004). The Court must construe the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in that party's favor. *SEC v. Monterosso*, 756 F.3d 1326, 1333 (11th Cir. 2014). However, to prevail on a motion for summary judgment, "the nonmoving party must offer more than a mere scintilla of evidence for its position; indeed, the nonmoving party must make a showing sufficient to permit the jury to reasonably find on its behalf." *Urquilla-Diaz v. Kaplan Univ.*, 780 F.3d 1039, 1050 (11th Cir. 2015).

DISCUSSION

Defendants move for summary judgment based on qualified immunity. As explained below: (1) Defendants did not violate Plaintiff's Fourth Amendment right to be free from excessive [*11] force and (2) even if they did, that right was not clearly established. Therefore, each Defendant is entitled to qualified immunity.

I. Plaintiff's Failure to File a Response or Statement of Material Facts

As an initial matter, Plaintiff did not file a Response or a SOMF in Opposition. Local Rule 56.1(a) provides that "[a] motion for summary judgment and the opposition to

it shall each be accompanied by a separate . . . Statement of Material Facts . . . [,]" which "shall list the material facts that the movant contends are not genuinely disputed." S.D. Fla. L.R. 56.1(a)(1). Under Local Rule 56.1(c), where the non-movant fails to file a SOMF in Opposition, "[a]ll material facts in [the moving] party's Statement of Material Facts may be deemed admitted," provided they are supported by record evidence. S.D. Fla. L.R. 56.1(c); *see also Jones v. Gerwens*, 874 F.2d 1534, 1537 n.3 (11th Cir. 1989) ("[f]acts set forth in the Defendants' Statement of Undisputed Facts which are not controverted, are deemed admitted" pursuant to the Local Rules). Further, Plaintiff's November 25, 2024 letter, which is Plaintiff's sole filing received by the Court after the filing of Defendants' Motions, states that Defendants "know the truths to what happened that day," and makes no objection to Defendants' Motions and accompanying factual materials [*12] [ECF No. 46].

Upon review of all the materials submitted by Defendants in support of summary judgment, the Court finds that Defendants' SOMF's are properly supported by record evidence. All factual statements in Defendants' SOMF's correspond to sworn official reports filed by Defendants in support of summary judgment. Thus, the Court deems Defendants' SOMF's [ECF Nos. 40, 42, 44] admitted.

"[A]fter deeming the movant's statement of undisputed facts to be admitted pursuant to Local Rule 56.1, the district court must then review the movant's citations to the record to 'determine if there is, indeed, no genuine issue of material fact.'" *Reese v. Herbert*, 527 F.3d 1253, 1269 (11th Cir. 2008) (quoting *United States v. One Piece of Real Property Located at 5800 SW 74th Avenue, Miami, Florida*, 363 F.3d 1099, 1103 n.6 (11th Cir. 2004)). At a minimum, courts "must review all of the evidentiary materials submitted in support of the motion for summary judgment." *5800 SW 74th Avenue*, 363 F.3d at 1101. Thus, even though Defendants' SOMF's are deemed admitted, the Court must still review the evidence submitted in support of summary judgment to ensure that it supports the Motions. *See id.* at 1102-03 (holding that even though the Government's motion for summary judgment was unopposed, the district court was still required to review the depositions attached to the Government's motion, which contradicted certain factual assertions made by the Government [*13] and created a genuine dispute of material fact).

After reviewing Defendants' SOMF's and supporting evidentiary materials, the Court finds no genuine dispute as to whether Defendants used excessive force in violation of the Fourth Amendment, or whether Plaintiff's rights were clearly established.

II. Qualified Immunity

"Qualified immunity shields government officials from liability for civil damages for torts committed while performing discretionary duties unless their conduct violates a clearly established statutory or constitutional right." *Stephens v. DeGiovanni*, 852 F.3d 1298, 1314 (11th Cir. 2017) (quoting *Hadley v. Gutierrez*, 526 F.3d 1324, 1329 (11th Cir. 2008)). An official asserting qualified immunity must first establish that he or she was acting within the scope of his or her discretionary authority when the allegedly wrongful act occurred. *Carter v. Butts County*, 821 F.3d 1310, 1319 (11th Cir. 2016). Under Florida's Baker Act, a law enforcement officer may deliver a person who appears to meet certain criteria to an appropriate facility for involuntary examination. § 394.463(2)(a)2, Fla. Stat. A person meets the Baker Act criteria if there is reason to believe the person has a mental illness and because of that mental illness, and:

> (a) 1. The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of examination; or
>
> 2. The person is unable to determine [*14] for himself or herself whether examination is necessary; and
>
> (b) 1. Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing, able, and responsible family members or friends or the provision of other services; or
>
> 2. There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.

§ 394.463(1), Fla. Stat. An officer transporting a person under the Baker Act "shall restrain the person in the least restrictive manner available and appropriate under the circumstances." § 394.463(2)(a)2, Fla. Stat.

Here, it is demonstrated by the record and undisputed that Defendants were acting within the scope of their discretionary authority when they used force against

Plaintiff. Defendants, present at the scene to support Rescue in assisting Plaintiff, observed Plaintiff acting erratically and threatening harm to others, and decided that he appeared to need medical attention and was a danger to [*15] himself and those around him [ECF No. 40-1 pp. 1-2]. The complained-of force occurred during Defendants' attempt to safely secure and transport Plaintiff under the Baker Act.

With discretionary authority established, "the burden shifts to [the plaintiff] to demonstrate that qualified immunity is inappropriate." *Moore v. Pederson*, 806 F.3d 1036, 1042 (11th Cir. 2015). To make that determination, the Court undergoes a two-pronged inquiry. First, the Court asks, "whether the facts, [t]aken in the light most favorable to the party asserting the injury, . . . show [that] the officer's conduct violated a [federal] right." *Salvato v. Miley*, 790 F.3d 1286, 1292 (11th Cir. 2015) (first and third alterations in original) (quoting *Tolan*, 572 U.S. at 655-56). Second, the Court asks, "whether the right in question was 'clearly established' at the time of the violation." *Id.* (quoting *Tolan*, 572 U.S. at 656). "When considering qualified immunity on a defendant's motion for summary judgment, [the Court] consider[s] the record in the light most favorable to the plaintiff, eliminating all issues of fact." *Wate v. Kubler*, 839 F.3d 1012, 1019 (11th Cir. 2016).

A. Defendants Did Not Use Excessive Force in Violation of the Fourth Amendment

1. Fourth Amendment Excessive Force Standard

Claims that law enforcement officers have used excessive force during any seizure of a free citizen should be analyzed under the Fourth Amendment, which guarantees citizens the [*16] right to be secure against unreasonable seizures. *See Graham v. Connor*, 490 U.S. 386, 394-95, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989). To demonstrate excessive force in violation of the Fourth Amendment, a plaintiff must allege "(1) that a seizure occurred and (2) that the force used to effect the seizure was unreasonable." *Troupe v. Sarasota County, Fla.*, 419 F.3d 1160, 1166 (11th Cir. 2005) (citing *Evans v. Hightower*, 117 F.3d 1318, 1320 (11th Cir. 1997). "When an officer carries out a seizure that is reasonable, taking into account all relevant circumstances, there is no valid excessive force claim." *Cnty. Of Los Angeles, Calif. V. Mendez*, 581 U.S. 420, 428, 137 S. Ct. 1539, 198 L. Ed. 2d 52 (2017).

"Reasonableness" of a use of force "must be judged from the perspective of a reasonable officer on the scene," and "[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary." *Graham*, 490 U.S. at 396-97. Factors to be considered ordinarily include "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Id.* at 396 (citing *Tennessee v. Garner*, 471 U.S. 1, 8-9, 105 S. Ct. 1694, 85 L. Ed. 2d 1 (1985)). The operative inquiry is an objective one, highly attentive to the particular facts and circumstances. *See id.* The factors cannot be applied mechanically, and courts must account [*17] for the fact that law enforcement officers are often forced to make split-second decisions regarding the appropriate use of force "in circumstances that are tense, uncertain, and rapidly evolving." *Jean-Baptiste v. Gutierrez*, 627 F.3d 816, 820 (11th Cir. 2010) (quoting *Graham*, 490 U.S. at 397). Courts "should be cautious about second-guessing a police officer's assessment, made on the scene, of the danger presented by a particular situation." *Ryburn v. Huff*, 565 U.S. 469, 477, 132 S. Ct. 987, 181 L. Ed. 2d 966 (2012).

The standard set in *Graham* is flexible. The Eleventh Circuit has recognized a test to determine reasonableness under *Graham* in the specific context of officers responding to a medical emergency, rather than making an arrest, originally established by the Sixth Circuit. *See Helm v. Rainbow City, Al.*, 989 F.3d 1265, 1273 (11th Cir. 2021) (citing *Estate of Hill v. Miracle*, 853 F.3d 306, 314 (6th Cir. 2017)). In such circumstances, courts should ask:

> (1) Was the person experiencing a medical emergency that rendered him incapable of making a rational decision under circumstances that posed an immediate threat of serious harm to himself or others?
>
> (2) Was some degree of force reasonably necessary to ameliorate the immediate threat?
>
> (3) Was the force used more than reasonably necessary under the circumstances (i.e., was it excessive)?

Id. If the answers to the first two questions are "yes," and the answer to the third question is "no," then the officer is entitled to qualified [*18] immunity. *Id.*

2. Application to the Facts of this Case

Applying the standards of *Graham* and *Miracle* to this case, the Court finds that Defendants did not use excessive force in violation of the Fourth Amendment. It is undisputed that a seizure occurred in this case. To resolve Defendants' Motions, the Court must determine the reasonableness of the force used by each of the Defendants to effect that seizure. The record contains no indication that Defendants were seizing Plaintiff for observed or suspected criminal activity; therefore, the ordinary *Graham* factors are less helpful to determine the reasonableness of Defendant's actions. The record shows that Defendants were on the scene responding to a medical emergency, specifically at Rescue's request for assistance with Plaintiff, who was a "combative patient" [ECF No. 40-1 pp. 1-2]. The test described in *Miracle* is therefore more applicable to these facts.

The first two questions in the *Miracle* test are the same for all Defendants. The answer to the first question—whether Plaintiff was experiencing a medical emergency that rendered him incapable of making a rational decision under circumstances that posed an immediate threat of serious harm to himself or others—is yes. The record demonstrates [*19] that when Defendants arrived on the scene in response to Rescue's call, Plaintiff was lying in a field, having complained of internal bleeding but aggressively resisting Rescue's efforts to assist. Gil and Pulliam were familiar with previous incidents where Plaintiff's condition and conduct had necessitated his involuntary examination under the Baker Act. Rescue also informed the officers on the scene that Plaintiff had a history of psychiatric disorders. Under these circumstances, the record indicates that Plaintiff was experiencing a medical emergency that rendered him incapable of making a rational decision under circumstances that posed an immediate threat of serious harm to himself or others. *See Helm*, 989 F.3d at 1273 (citing *Miracle*, 853 F.3d at 314).

The answer to the second question—whether some degree of force reasonably necessary to ameliorate the immediate threat—is also yes. Plaintiff was combative with Rescue and law enforcement. Despite his complaint of a medical event, he behaved erratically and issued threats, first to Rescue, and then to Defendants. Rescue informed the officers on the scene that Plaintiff had a history of being combative. Plaintiff's general state, history, incoherence, and aggressiveness on the [*20] scene was sufficient for Rescue to call Defendants for assistance, for Defendants to all agree that Plaintiff's condition met the requirements for involuntary examination under the Baker Act, and that some force—specifically, handcuffing and subduing Plaintiff—was needed to successfully transport him to Lawnwood Hospital. Under these circumstances, the record indicates that some degree of force was reasonably necessary to ameliorate the immediate threat. *See Helm*, 989 F.3d at 1273 (citing *Miracle*, 853 F.3d at 314).

To determine the answer to the third question—whether the force used was more than reasonably necessary under the circumstances—the Court examines the force employed by each Defendant individually:

i. Femminello

Feminello did not use unreasonable force under the circumstances. During the encounter with Plaintiff, Femminello used force in the following ways: (1) gripping Plaintiff's right arm and placing a handcuff on Plaintiff's right wrist; (2) holding Plaintiff down on the ground; and (3) striking Plaintiff twice in the stomach with less than full force, with his non-dominant hand, once before, and once after Plaintiff began to pinch Femminello's testicle. The first two uses of force are *de minimis*, as some force was [*21] justified under the circumstances and the force used caused little to no discernible injury and was "little different from the minimal amount of force and injury involved in a typical arrest." *Nolin v. Isbell*, 207 F.3d 1253, 1258 n.4 (11th Cir. 2000). Therefore, no reasonable juror could find that Femminello's gripping of Plaintiff's right arm, placing a handcuff on his right wrist, and holding Plaintiff down on the ground was constitutionally unreasonable.

Femminello's third use of force, his two strikes to Plaintiff's stomach, were likewise not unreasonable. Plaintiff's erratic and aggressive behavior during his active resistance gave Defendants a reasonable basis to believe that Plaintiff posed an immediate threat to the officers, and his pinching of Femminello's right testicle posed an immediate threat to Femminello specifically. A reasonable officer under the general circumstances would have a reasonable basis to conclude that strikes to the body of less than full force would be necessary to gain Plaintiff's submission. Further, a reasonable officer in Femminello's specific position of having his testicle pinched by an erratic and aggressive person being taken into custody would have a reasonable basis to use such force to protect himself [*22] from immediate harm. Femminello did not use a closed fist and

delivered the strikes without using full force using his non-dominant hand. No reasonable juror could find that Femminello's two strikes to Plaintiff's stomach under these circumstances amounted to an unreasonable use of force. Therefore, Femminello did not use excessive force in violation of Plaintiff's Fourth Amendment rights and is entitled to qualified immunity in this case. *See Helm*, 989 F.3d at 1273 (citing *Miracle*, 853 F.3d at 314).

ii. Gil

Gil did not use unreasonable force under the circumstances. The record indicates that the only force Gil employed during the encounter with Plaintiff was a physical attempt to hold down Plaintiff's left hand and when Plaintiff began to resist Femminello's and Pulliam's attempts to handcuff him. This *de minimis* force is insufficient, especially under these circumstances of Plaintiff's aggression and the danger he posed to himself and those around him, to support a claim of excessive force under the Fourth Amendment. *See Nolin*, 207 F.3d at 1257. Gil's assessment of the danger posed by Plaintiff under the circumstances was a sufficient basis to justify his use of *de minimis* force in attempting to subdue Plaintiff for involuntary examination. *See Ryburn*, 565 U.S. at 477. Therefore, no reasonable juror could [*23] conclude that Gil used excessive force in violation of Plaintiff's Fourth Amendment rights, and Gil is entitled to qualified immunity in this case. *See Helm*, 989 F.3d at 1273 (citing *Miracle*, 853 F.3d at 314).

iii. Pulliam

Pulliam did not use unreasonable force under the circumstances. During the encounter with Plaintiff, Pulliam used force in the following ways: (1) gripping Plaintiff's left arm while Femminello handcuffed Plaintiff's right wrist; (2) holding Plaintiff down on the ground; and (3) striking Plaintiff in the face with his non-dominant hand after Plaintiff attempted to bite him, Plaintiff's teeth scraping his fingers. As with Femminello, Pulliam's first two uses of force are *de minimis*, as some force was justified under the circumstances and the force used caused little to no discernible injury and was "little different from the minimal amount of force and injury involved in a typical arrest." *Nolin v. Isbell*, 207 F.3d 1253, 1258 n.4 (11th Cir. 2000). Therefore, no reasonable juror could conclude that Pulliam's gripping of Plaintiff's left arm and holding him on the ground, and holding Plaintiff down on the ground, was an unreasonable use of force precluding qualified immunity.

Pulliam's third use of force, his strike to Plaintiff's face, was likewise not unreasonable. As discussed, Plaintiff's [*24] erratic and aggressive behavior during the encounter at issue gave Defendants a reasonable basis to believe that Plaintiff posed an immediate threat. During Plaintiff's active resistance, he made multiple attempts to bite Pulliam, which he continued in defiance of instructions to stop. Pulliam struck Plaintiff only in response to Plaintiff's near-success in biting Pulliam's hand. A reasonable officer in Pulliam's position would have a reasonable basis to believe that a strike to the face would gain Plaintiff's submission and would protect Pulliam from physical harm. Pulliam did not use his dominant hand and did not forcibly punch Plaintiff. No reasonable juror could conclude that Pulliam's single strike to Plaintiff's face under these circumstances amounted to an unreasonable use of force. Therefore, Pulliam did not use excessive force in violation of Plaintiff's Fourth Amendment rights, and Pulliam accordingly is entitled to qualified immunity in this case. *See Helm*, 989 F.3d at 1273 (citing *Miracle*, 853 F.3d at 314).

In sum, the Court finds that the record shows that Defendants did not use excessive force in violation of Plaintiff's Fourth Amendment rights.

B. Even if Defendants Violated Plaintiff's Fourth Amendment Rights, Those Rights Were Not "Clearly Established"

Even if [*25] this Court were to find a Fourth Amendment violation, it does not find that Plaintiff's rights were "clearly established." "A clearly established right is one that is sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Mullenix v. Luna*, 577 U.S. 7, 11, 136 S. Ct. 305, 193 L. Ed. 2d 255 (2015) (citation and quotation omitted). "For the law to be 'clearly established,' case law must ordinarily have been earlier developed in such a concrete and factually defined context to make it obvious to all reasonable government actors, in the defendant's place, that what he is doing violates federal law." *Priester v. City of Riviera Beach, Fla.*, 208 F.3d 919, 926 (11th Cir. 2000).

The Eleventh Circuit has identified three ways to evaluate whether a right is clearly established:

> First, the plaintiff can point to a materially similar case decided at the time of the relevant conduct by the Supreme Court, the Eleventh Circuit, or the relevant state supreme court. The prior case law need not be directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate. Second, the plaintiff can identify a broader, clearly established principle that should govern the novel facts of the situation. Third, the plaintiff can show that the conduct at issue so obviously [*26] violated the Constitution that prior case law is unnecessary.

Patel, 969 F.3d at 1186 (alteration omitted) (quoting *J. W. ex rel. Williams v. Birmingham Bd. of Educ.*, 904 F.3d 1248, 1259-60 (11th Cir. 2018)). For each of these three methods, the plaintiff bears the burden of demonstrating that the right was clearly established at the time of the alleged constitutional violation. *See Johnson v. Conway*, 688 F. App'x 700, 706-07 (11th Cir. 2017).

Plaintiff did not respond to Defendants' Motions, and therefore has identified no materially similar case that clearly establishes that Defendants' conduct was unlawful, and this Court is aware of none. By failing to respond, Plaintiff likewise has not identified "a broader, clearly established principle" that should govern this situation. *Williams*, 904 F.3d at 1260. As explained, no reasonable juror could find Defendants' respective uses of force unreasonable, but to the extent that is debatable, Plaintiff cannot show that Defendants' conduct was "so obviously unreasonable that [they] should have known better in the absence of case law more closely on point." *Patel*, 969 F.3d at 1187. Finally, Plaintiff has not shown "that the conduct at issue so obviously violated the Constitution that prior case law is unnecessary." *Williams*, 904 F.3d at 1260. Here, Plaintiff must show that Defendants' actions went "so far beyond the hazy border between excessive and acceptable force that [they] had to [*27] know [they were] violating the Constitution even without caselaw on point." *Patel*, 969 F.3d at 1187 (quoting *Lee v. Ferraro*, 284 F.3d 1188, 1190-91, 1199 (11th Cir. 2002)). As analyzed above, no reasonable juror could conclude on these facts that Defendants' actions were unconstitutional; the record indicates that Defendants used no more force than reasonably necessary under the circumstances. Accordingly, there is no jury question as to whether Defendants are entitled to qualified immunity, and summary judgment in their favor is appropriate.

CONCLUSION

For the foregoing reasons, it is **ORDERED AND ADJUDGED** as follows:

1. Defendants' Motion for Summary Judgment [ECF Nos. 39, 41, 43] are **GRANTED**.
2. The Court will enter a separate judgment.

3. The Clerk is directed to **MAIL** a copy of this Order to Plaintiff at the address listed below.

4. This action is **CLOSED**, and all pending motions are **DENIED** as moot.

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 13th day of February, 2025.

/s/ Robin L. Rosenberg

ROBIN L. ROSENBERG

UNITED STATES DISTRICT JUDGE

FINAL JUDGMENT

Pursuant to Federal Rule of Civil Procedure 58, and in accordance with the reasons stated in the Court's Order Granting Defendants' Motions for Summary Judgment [ECF No. 47], judgment is entered in favor of Defendants and against Plaintiff. [*28]

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 14th day of February, 2025.

/s/ Robin L. Rosenberg

ROBIN L. ROSENBERG

UNITED STATES DISTRICT JUDGE