IN THE DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

WILLIAM DAVIS, et al.,	)	
	)	
Plaintiffs,	)	1:21-cv-01773 GBW-EGT
	)	
v.	)	
	)	JURY TRIAL DEMANDED
KIRK NEAL, et al.,	)	
	)	
Defendants.	)	

OPENING BRIEF IN SUPPORT OF PLAINTIFF SELBY'S MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST DEFENDANT MITCHELL

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Dated: May 30, 2025

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STATEMENT OF NATURE AND STAGE OF PROCEEDINGS

Nature of the case: This case arises from the systematic, appalling, and unconstitutional abuse of thirty-four men incarcerated or detained in Sussex Correctional Institute during 2020 and 2021 by Correctional Officers. This case arises because Warden Mears and Deputy Warden Beck encouraged such abuse by adopting unconstitutional policies and practices, knowingly failed to stop it and promoted rather than disciplined abusive correctional officers.

Stage of proceedings: On July 21, 2022, Plaintiff Selby ("Selby"), along with other victims, filed a Second Amended Complaint, which defendants timely and unsuccessfully moved to dismiss. On August 17, 2023, the Court (J. Ambro) granted defendants' motion as to the entirety of Count VII based on the law of dignity and partially granted dismissal of certain claims but denied the balance of the Motion. D.I. 50.

On September 19, 2023, Sudler, along with other victims, filed a Third Amended Complaint ("TAC") to conform the pleading to the Court orders. D.I. 60. On December 1, 2023, Defendants – all of whom are represented by the same lawyers – filed an Answer. D.I. 69.

On October 15, 2024, this Court adopted a scheduling order (via an email adopting the parties' stipulation, D.I. 260) that governed the litigation of the TAC and required fact and expert discovery to be concluded by March 31, 2025 and motions for summary judgment to be filed by May 30, 2025. The parties timely concluded discovery.

On December 16, 2025, the parties are required to file a joint proposed pretrial order. On December 23, 2025, the Court will hold a pretrial conference beginning at 1pm.

On January 12, 2026, at 9:30 am, a twelve-day jury trial is scheduled to begin. *See* D.I. 190 at 10.

Now, Sudler seeks partial summary as to liability with respect to Count I of the Third Amended Complaint against correctional officer (corporal) defendant Isaac Mitchell ("CO

Mitchell") because his unconstitutional use of excessive force is beyond dispute, as explained below.

At this time, Selby respectfully requests that the Court to enter a judgment on Count I – Excessive Force against CO Mitchell. Selby will be pursuing the remainder of his claims against CO Mitchell and all his claims against the other defendants, and will seek damages on all relevant counts, during the January 2026 Trial.

SUMMARY OF ARGUMENT

This motion falls into a narrow category governed by *Scott v. Harris*, 550 U.S. 372, 380 (2007). There, the Supreme Court recognized that even in fact-intensive cases, summary judgment should be granted if one party's story is "blatantly contradicted by the record, so that no reasonable jury could believe it . . .." *Id*.

As explained below in Section A, the body evidence relevant to resolution of a summary judgment motion turns on "the specific constitutional right allegedly infringed by the challenged application of force." *Graham v. Connor*, 490 U.S. 386, 394 (1989). Excessive force claims by convicted inmates such as Sudler are governed by the Eight Amendment's prohibition against cruel and unusual punishment and require courts to consider considering (1) the need for application of force, (2) the relationship between that need and the amount of force used, (3) the threat reasonably perceived by responsible officials and (4) any efforts made to temper the severity of forceful response. *Hudson v. McMillian*, 503 U.S. 1,7 (1992); *see also Whitley v. Albers*, 475 U.S. 312 (1986); *Ingrahm v. Wright*, 430 U.S. 651, 664 (1977). If the relevant record evidence on these factors cannot reasonably be disputed by the non-moving party, judgment is appropriate. *See Scott v. Harris*, 550 U.S. 372, 380 (2007)(summary judgment in Eighth Amendment case upheld because need not credit a story that is blatantly contradicted by record

evidence); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986): *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248 (1986):

As explained below in Section B, CO Mitchell made admissions during his deposition that establish he used excessive and unnecessary force against Selby without making ***any*** effort to temper the use of force. These admissions are corroborated by a contemporaneous video as well as by testimony from a DOC Internal Affairs investigator who admitted that CO Mitchell used excessive force against Selby.

On such a record and for all the reasons set out below, no reasonable jury could find in favor of CO Mitchell. *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248 (1986) (summary judgment should be granted if the standard for a directed verdict is met). Selby respectfully requests that this Court grant his F.R.C.P. 56 (a) motion for partial summary judgment against CO Mitchell on Count I – Excessive Force.

STATEMENT OF FACTS

Selby's motion relies exclusively on indisputable facts, which are set forth here and in the appended Statement of Material Facts.

1. In 2020, Defendant Mitchell joined the Delaware Department of Corrections ("DOC") and went through the academy. Joint Appendix ("J.A.") [JA_03291, JA_03292] (Mitchell Tr. 18: 14-21, 19: 1-10.)

2. By the time period of the lawsuit, Defendant Mitchell worked at SCI where he was promoted to corporal. (Answer, Dkt. 69 at ¶ 58); [JA_03291] (Mitchell Tr. 19:19-20.)

3. During his time at the academy and annual refresher trainings, Defendant Mitchell received extensive training on the permissible uses of force. [JA_02772, JA_02773, JA_02776, JA_02777] (Mitchell Tr. 23:3-21, 24:1-6; 27:2-5, 16-20; 28:1-4.)

4. He also received extensive training on the appropriate use of pepper spray. [JA_02769] (Mitchell Tr. 8:9-21 (trained on minimum distance to use spray); [JA_02776] (Mitchell Tr. 27: 16-21; 28:1-15 (certified on use of OC spray).

5. Defendant Mitchell admitted he knew that if the spray is used to close to the target, it may penetrate the tissue of the eyes or skin, which is known as hydraulic needling. [JA_03298, JA_03290] (Mitchell Tr. 11: 18-21, 12:1-10.) He admitted that he knew that the recommended distance to use pepper spray was "three to six feet." [JA_03290] (Mitchell Tr. 12:11-19.)

6. Defendant Mitchell admitted that, despite this extensive training, he was investigated for an excessive use of force involving pepper spray and required to undergo additional training. [JA_02781, JA_02782, JA_02783, JA_02786] (Mitchell Tr. 32:13-21, 33:1-8, 18-21, 34:1-15, 37:8-11.)

7. Defendant Mitchell discharged his pepper spray onto Plaintiff Selby. (Answer, Dkt. 69 at ¶ 666.)

8. Contemporaneous video produced by DOC pursuant to a subpoena captures the encounter between Plaintiff Selby and Defendant Mitchell. J.A. [JA_03277] (Clip 438_01 0:00 – 1:40). The video shows Plaintiff Selby standing still and using the telephone. Defendant Mitchell walks up and stands inches away and appears to be speaking for sixteen seconds. After sixteen seconds, Defendant Mitchell grabs Plaintiff Selby, sprays OC spray in his face and forcibly throws him to the ground. *Id*.

9. During his deposition, Defendant Mitchell admitted he used pepper spray on Plaintiff Selby when he was only a step away from him. [JA_03293, JA_02810] (Mitchell Tr. 132: 18-21, Mitchell Tr. 133: 18-21.)

10. Defendant Mitchell admitted that Selby never verbally or physically threatened him or anyone. [JA_02808] (Mitchell Tr. 123: 5-15.)

11. Defendant Mitchell admitted that the use of force resulting in Selby being forcibly thrown to the ground "possibly" could have been avoided if he had merely given him a verbal order. [JA_02811] (Mitchell Tr. 134:13-20.)

12. Nobody investigated Defendant Mitchell's use of force until Plaintiff Selby filed his lawsuit. After the lawsuit was filed, Internal Affairs investigator Huttie was assigned to measure correctional officer's conduct against policy to determine if excessive force was used. *See* [JA_02496, JA_02498] (Huttie Tr. 25:2-8; 68:2-6.) Such determinations of policy violations are clearly within the purview of Internal Affairs investigators. *See* [JA_03129] (Troxler Tr. 26:7-9 (investigator's obligation to apply the policy and "determine whether or not the officer's use of force was excessive according to the policy.")

13. Internal Affairs investigator Huttie admitted under questioning during his deposition that Defendant Mitchell violated the policy prohibiting excessive use of force when he sprayed Plaintiff Selby:

> Q. And we can agree that Mr. -- I'm sorry -- Officer Mitchell pepper-sprayed a non-moving resister.
>
> A. Yes, sir.
>
> Q. And we can agree that according to the policy model that's not permitted; right?
>
> A. Yes, sir.

[JA_02505] (Huttie Tr. 218:12-18.)

14. Two other plaintiffs in this lawsuit alleged in the Third Amended Complaint, D.I. 60, that Defendant Mitchell used excessive force against them: Haymond, ¶¶ 58, 312-321 and Newcomb, ¶¶ 58, 465-479.

ARGUMENT

A. Eighth Amendment Jurisprudence Governs Resolution of Selby's Motion.

Under F.R.C.R. 56(a) and well-established Supreme Court jurisprudence, a party moving for summary judgment must demonstrate no genuine issue of material fact and append admissible evidence sufficient to establish entitlement to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). Summary judgment cannot be granted when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248 (1986), quoting *First National Bank of Arizona v. Cities Service Co*., 391 U.S. 253 (1968). Inferences drawn from evidence alone suffice to prevent a grant of summary judgment: "Summary judgment is not permissible if there is the "possibility of the existence of certain facts from which it 'would be open to a jury . . . to infer from the circumstances' that there had been a meeting of the minds." *Anderson* at 249, citing *Adickes v. SH. Kress & Co.*, 398 U.S. 144, 158-59 (1970). *See also Gonzalez v. Sec'y of Dep't of Homeland Sec*., 678 F.3d 254, 257 (3d Cir. 2012).

District courts cannot make credibility determinations. Instead ***all*** evidence of the non-moving party is to be believed and justifiable inferences are to be drawn in his favor. *Marino v. Indus. Crating Co*., 358 F.3d 241, 247 (3d Cir. 2004). But despite the high standard, summary judgment is appropriate if – and only if – the non-moving party's story lacks any record support: "when opposing parties tell two different stories, one of which is *blatantly contradicted by the record*, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgments. *Scott v. Harris*, 550 U.S. 372,

380 (2007) (emphasis added). There, in a police case involving allegations of dangerous driving, the Court held that "Respondent's version of events is so utterly discredited by the record that no reasonable jury could have believe him." *Id*. at 380-81.

The body of relevant evidence that should be considered for purposes of a summary judgment motion turns on the substantive law that controls the litigation. And the applicable body of law turns on "the specific constitutional right allegedly infringed by the challenged application of force." *Graham v. Connor*, 490 U.S. 386, 394 (1989). Excessive force claims by convicted inmates such as Sudler are governed by the Eight Amendment's prohibition against cruel and unusual punishment. *Whitley v. Albers*, 475 U.S. 312 (1986). The Supreme Court has explained that the Eighth Amendment reflects an intent to limit the power of law enforcement personnel. *Ingrahm v. Wright*, 430 U.S. 651, 664 (1977).

In *Whitley*, the Supreme Court examined the parameters of the Eighth Amendment right in the context of a prison riot. Citing *Estelle v. Gamble*, 429 U.S. 97, 104 (1976), the Court held that an express intent to inflict unnecessary pain is not required. *Id*. at 319. Instead, the Supreme Court held that courts need to consider the need for the application of force and the relationship between the need and the amount of force used. "From such considerations inferences may be drawn as to whether the use of force could plausibly have been thought necessary, or instead evinced such wantonness with respect of the unjustified infliction of harm as is tantamount to a knowing willingness that it occur. *Id*. at 321. In addition, courts should consider the extent of injury and whether a reasonable and responsible official would perceive a threat to the safety of the staff or inmates. *Id*.

In *Hudson v. McMillian*, 503 U.S. 1 (1992), the Court extended the *Whitley* analysis of factors to *all* instances in which prison officials stand accused of using excessive physical force

in violation of the Eighth Amendment, not merely those involving prison riots. *Id*. at 6-7. There, in a lawsuit brought by a convicted inmate alleging prison guards had beaten him, the Fifth Circuit had adopted the prison officials' argument that they could not be held liable because the inmate had suffered only *de minimis* injuries.

The Supreme Court reversed the Fifth Circuit and held that the extent of injuries may be one factor to be considered but they are not dispositive. The Court held that "[i]n the excessive force context, society's expectations are different. When prison officials maliciously and sadistically use force to cause harm, contemporary standards of decency are always violated. *See Hudson v. McMillian,* 503 U.S. 1, 9, citing *Whitley,* 475 U.S. at 327. This is true whether or not significant injury is evident. Otherwise, the Eight Amendment would permit any physical punishment, no matter how diabolic or inhuman, inflicting less than some arbitrary quantity of injury. Such a result would have been as unacceptable to the drafters of he Eight Amendment as it is today." *Id*. at 9. As a result, the Court held "the absence of a serious injury is therefore relevant to the Eighth Amendment inquiry but does not end it." *See also Brooks v. Kyler*, 204 F.3d 102, 104 (3d Cir. 2000) and *Robinson v. Danberg*, 673 Fed.Appx. 205 (3d Cir. 2016).

The *Hudson* Court reaffirmed the importance of considering (1) the need for application of force, (2) the relationship between that need and the amount of force used, (3) the threat reasonably perceived by responsible officials and (4) any efforts made to temper the severity of forceful response. *Hudson v. McMillian*, 503 U.S. at 7.

Consideration of such factors reveals whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm. *Id.; see also Kingsley v. Hendrickson*, 576 U.S. 389 (2015); *Brooks v. Kyler,* 204 F.3d 102, 109 (3d Cir. 2000), *cert. denied* 543 U.S. 878 (2004) ("the focus always remains on the force used (the blows).");

Fuentes v. Wagner 206 F.3d 335, 245 (3d Cir. 2000), *cert denied* 531 U.S. 821 (2000)(de minimis force may be constitutionally significant"); *Smith v. Mensinger*, 293 F.3d 641, 649 (3d Cir. 2002).

B. The Undisputed Facts Establish That CO Mitchell Used Wholly Unnecessary and Extreme Force Against Selby Without Making Any Effort To Avoid or Temper the Severity of the Use of Force.

Analysis of each of the *Hudson* factors compels judgment for Selby. ***First***, on "the threat reasonably perceived by responsible officials," CO Mitchell admitted that Selby ***never*** verbally or physically threatened him or anyone during the incident. SOF ¶ 10. The admission that Selby posed no threat is wholly corroborated by the video, which shows Selby standing still and using the telephone when CO walks up and stands inches away and appears to be speaking for sixteen seconds. After sixteen seconds, CO Mitchell grabs Selby, sprays OC spray in his face and forcibly throws him to the ground. SOF ¶ 8. The indisputable fact that Selby posed no threat, standing alone, suffices as grounds to grant Selby judgment.

Second, on the need for application of force, CO Mitchell again made a dispositive admission. He testified that "possibly" his use of force could have been avoided if he had given a verbal order to Selby. SOF ¶ 11. CO Mitchell received extensive training on the permissible uses of force and was disciplined in the past for using excessive force. SOF ¶¶ 3-6. His begrudging admission that he could have avoided force, taken together with the fact that Selby posed no threat, compels the conclusion that CO Mitchell used wholly unnecessary excessive force.

Third, on any efforts made to temper the severity of forceful response, CO Mitchell again made revealing and binding admissions during his deposition. He admitted that his training taught him to use pepper spray from a distance of at least three feet because spraying from a

closer distance caused hydraulic needling, a painful condition where the spray penetrates the tissue of the eyes. SOF ¶¶ 3-5. Yet CO Mitchell admitted he pepper sprayed Selby despite the lack of threat and did so when he was less than one step away from him. SOF ¶ 7 and ¶ 9. These admissions are corroborated by the video, which also reflects CO Mitchell immediately and forcibly throwing Selby to the ground after spraying him. SOF ¶ 8.

Fourth, on the relationship between that need and the amount of force used, the facts are clear from CO Mitchell's admissions and the video. CO Mitchell used force in the absence of a threat, and the use of force was malicious, not inadvertent. Despite knowing no threat existed, CO Mitchell pepper sprayed Selby in the face from a step away and immediately used physical violence to throw Selby on the ground. SOF ¶¶ 3-11.

Such misconduct clearly violated the Eighth Amendment, as was admitted by the DOC's Internal Affairs investigator who became involved only after Selby filed the lawsuit:

> Q. And we can agree that Mr. -- I'm sorry -- Officer Mitchell pepper-sprayed a non-moving resister.
>
> A. Yes, sir.
>
> Q. And we can agree that according to the policy model that's not permitted; right?
>
> A. Yes, sir.

SOF ¶ 13.

Taken as whole, all the evidence points to only one conclusion: any reasonable jury hearing the record evidence would find that CO Mitchell used unnecessary and excessive force against Selby. *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248 (1986) (summary judgment should be granted if the standard for a directed verdict is met).

CONCLUSION

The indisputable facts – uncontestable video, admissions made by CO Mitchell, and testimony from DOC's Internal Affairs investigator – cannot be contradicted. This case, like the case in *Scott v. Harris*, 550 U.S. 372, 380 (2007), falls into the rare category where a fact-intensive dispute should be resolved under F.R.C.P. 56 (a). That is, any effort by CO Mitchell to contradict his own testimony, the video and the DOC testimony cannot be credited by a reasonable jury. Based on the indisputable facts and controlling *Hudson v. McMillian*, 503 U.S. 1 (1992) factors, Selby respectfully requests that this Court grant his motion seeking partial summary judgment against CO Mitchell on Count I – Excessive Force.

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