

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

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<b>ANTHONY MYKAEL BOND,</b>	)	
	)	
Plaintiff,	)	
	)	
	)	
	)	
v.	)	No. 01-2581 D/Bre
	)	
	)	
<b>A. GALES, C. WATKINS, V. W. GATES,</b>	)	
<b>SHELBY COUNTY SHERIFF'S</b>	)	
<b>DEPARTMENT</b>	)	
	)	
Defendant.	)	

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**ORDER GRANTING IN PART AND DENYING IN PART  
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

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This matter is before the Court on the motion of Defendants Angela Gales, Charles Watkins, and Velda Gates for summary judgment of Plaintiff Anthony Mykael Bond's complaint filed pursuant to 42 U.S.C. § 1983. Plaintiff avers that his Eighth Amendment right to be free from cruel and unusual punishment was violated when 1) a jail officer lifted Plaintiff's arms behind his back and sprayed him in the face with "freeze+p", a chemical agent similar to pepper spray; and 2) he did not receive adequate medical treatment promptly after he was sprayed. Defendants argue that Plaintiff's § 1983 claims must fail because 1) the officer who lifted Plaintiff's arms behind his back and sprayed him with freeze+p acted reasonably under the circumstances surrounding the events at issue; and 2) Plaintiff received adequate and prompt medical attention. The Court has jurisdiction

pursuant to 28 U.S.C. § 1331. For the reasons stated herein, the Court grants in part and denies in part Defendants' motion for summary judgment.

## **I. Background Facts<sup>1</sup>**

Plaintiff is an inmate in Lower Level Pod B at the Shelby County Criminal Justice Center ("Jail"). On May 8, 2001, a shakedown<sup>2</sup> of Lower Level Pod B was conducted by a shakedown team at 9:20 a.m. During the shakedown, the Lower Level Pod B inmates were lined up facing a wall with their hands handcuffed behind their backs. The sequence of events which lead to the incidents underlying Plaintiff's excessive force claim are in dispute. Defendants allege that Defendant Gales gave Plaintiff numerous verbal warnings to keep his face directed towards the wall, which he failed to heed. Instead, Plaintiff allegedly threatened to sue Defendant Gales and attempted to strike her in the abdomen with his elbow. Defendants allege that by this behavior Plaintiff was attempting to incite other prisoners who were in the hall during the shakedown. Defendant Gales approached Plaintiff and allegedly placed her hands on his handcuffs. Defendants allege that "[a]fter becoming fearful for her safety as well as that of others when she felt [Plaintiff] push back as she had her hands on his handcuffs, Defendant Gales sprayed Plaintiff in the face with 'freeze+p'." Def.'s Mot. at 3. Defendants allege that after Plaintiff was sprayed with freeze+p, Defendants Gales and Watkins lowered him to the floor.

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<sup>1</sup>The following is a statement of facts taken from the Memorandum of Points and Authorities Supporting Motion of Defendants Gales, Gates, and Watkins for Summary Judgment ("Def.'s Mot.") and Plaintiff's Memorandum in Response to Defendants' Motion for Summary Judgment.

<sup>2</sup>"A shakedown occurs when prison officials search inmates and their cells for any weapons and/or contraband that they might possess on their person and in their individual cells." Defs.' Mot. at 2.

Plaintiff avers that he complied with Defendant Gales' request that he face the wall. However, at some point Plaintiff states that he did look over his shoulder whereupon Defendant Gales grabbed his handcuffed arms, lifted them up, and then sprayed freeze+p into his face. Plaintiff further alleges that Defendant Gales had her freeze+p out of its holster before she approached Plaintiff. Plaintiff denies that he ever made an attempt to assault or strike Defendant Gales and denies that he threatened to sue Defendant Gales. Plaintiff also alleges that Defendants did not "lower[]" him to the floor after he was sprayed with freeze+p, but that Defendants tackled or threw him to the floor and assaulted him. Defendant Gates was the Sergeant who supervised the shakedown. Plaintiff alleges that at no point did Defendant Gates attempt to intervene and prevent Defendant Gales from lifting up his arms, spraying him with freeze+p, tackling him to the floor or assaulting him.

At the conclusion of the shakedown, Defendant Gates and another officer escorted Plaintiff to the Lower Level Medical. In the Lower Level Medical, Plaintiff was examined by Medic Sims and photographs of his face were taken.

## **II. Legal Standard**

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). In other words, summary judgment is appropriately granted "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

In evaluating a motion for summary judgment, all the evidence and facts must be viewed in a light most favorable to the non-moving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Walbourn v. Erie County Care Facility, 150 F.3d 584, 588 (6th Cir. 1998). However, the nonmovant “may not rest upon the mere allegations or denials of [the] pleading[s], but . . . must set forth specific facts showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e).

### **III. Analysis**

The Court first notes that Plaintiff cannot state a claim under the Eighth Amendment. There is no dispute that Plaintiff was a pre-trial detainee at the Jail when the incident with Defendant Gales occurred. The Sixth Circuit has established that alleged misconduct that occurs prior to conviction does not trigger Eighth Amendment protections. Bass v. Robinson, 167 F.3d 1041, 1048-1049 (6<sup>th</sup> Cir. 1999). Nonetheless, the Supreme Court has held that the Due Process Clause of the Fourteenth Amendment prohibits the punishment of pre-trial detainees who have yet to be convicted of a crime. Bell v. Wolfish, 441 U.S. 520, 535 (1979). Therefore, a pre-trial detainee’s claims that officers applied excessive force to his person and that he received inadequate medical care as a form of punishment are cognizable under the Fourteenth Amendment but are analyzed under the Eighth Amendment. Thompson v. County of Medina, 29 F.3d 238, 242 (6<sup>th</sup> Cir. 1994); Polk v. Parnell, 1997 WL 778511 at \*1 (6<sup>th</sup> Cir. 1997) (unpublished opinion).

#### **A. Excessive Force**

In support of summary judgment, Defendants assert that Defendant Gales acted with a reasonable amount of force solely as a means of subduing Plaintiff, who failed to comply with Defendant Gales’ requests to face the wall, attempted to elbow Defendant Gales in the stomach,

threatened to sue Defendant Gales, and attempted to incite other detainees. The Court finds that Defendants have failed to demonstrate that they are entitled to judgment as a matter of law on Plaintiff's excessive force claim.

The relevant inquiry when analyzing a claim that officers used excessive force on a pre-trial detainee is "whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." Combs v. Wilkinson, 315 F.3d 548 (6<sup>th</sup> Cir. 2002) (quoting Hudson v. McMillian, 503 U.S. 1, 7 (1992) (internal quotations omitted)). McMillian lays out several factors which may be relevant when considering whether officers used excessive force: (1) the extent of the claimant's injuries; (2) the need for application of force; (3) the relationship between the need for force and the amount of force used; (4) the threat reasonably perceived by the officer who used the force; and (5) any efforts made to temper the severity of a forceful response. McMillian, 503 U.S. at 7; Siggers v. Renner, 2002 WL 847986 at 1 (6<sup>th</sup> Cir. 2002) (unpublished opinion). There are subjective and objective elements to this inquiry. That is, a court must ask whether the officer acted with a sufficiently culpable state of mind (the subjective component), and there must be objective evidence that the harm inflicted rises to the level of a constitutional violation (the objective component). Id. at 8.

In support of their motion, Defendants filed a videotape of the incident in question. The Court finds that the videotape provides a view of the incident which could support either Plaintiff's or Defendants' versions of the facts. The videotape does not reveal the extent of Plaintiff's injuries. However, the Court finds that after reviewing the videotape reasonable minds could differ as to whether Plaintiff's actions necessitated the use of force, and if such force was needed, whether Defendant Gales used excessive force considering that Plaintiff's hands were handcuffed behind his

back. Furthermore, the Court finds that reasonable minds could differ as to whether Defendant Gales' fears that Plaintiff actually posed a danger or that he was attempting to incite other inmates were reasonable in light of the facts that (1) there were several other officers in the hallway during the incident, and (2) none of the other detainees appeared to move during the entire incident. Moreover, after viewing the tape, the Court finds that reasonable minds could conclude that (1) once asked, Plaintiff complied with Defendant Gales' request that he keep his face towards the wall; (2) Plaintiff's alleged attempt to assault Defendant Gales by hitting her in the stomach was actually a knee-jerk reaction to Defendant Gales lifting his handcuffed arms in the air behind him; (3) Defendant Gales had her freeze+p in her hand, poised to spray before Plaintiff's alleged attempt to elbow her in the stomach; and (4) Plaintiff was subdued before the freeze+p was sprayed in his face. Thus, the Court finds that the videotape of the incident raises genuine issues of material fact as to whether Defendant Gales "maliciously and sadistically" lifted Plaintiff's arms behind his back and sprayed him in the face with freeze+p.

Plaintiff avers that because Defendant Gates witnessed Defendant Gales' conduct, Defendant Gates also is liable in her supervisory capacity for failure to protect Plaintiff. The Court disagrees. A supervisor may be subject to § 1983 liability when the officer is deliberately indifferent to a substantial risk of serious harm to an inmate's personal safety. Helling v. McKinney, 509 U.S. 25, 32, 113 S. Ct. 2475, 2480, 125 L.Ed.2d 22 (1993); Wilson v. Seiter, 501 U.S. 294, 297, 111 S. Ct. 2321, 2323, 115 L.Ed.2d 271 (1991); Stewart v. Love, 796 F.2d 43, 44 (6th Cir. 1982). A § 1983 "claimant need not show that a prison official acted or failed to act believing that harm actually would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of harm." Farmer v. Brennan, 511 U.S. 825, 834 (1994). However, a plaintiff

must allege that the supervisor directly participated in the unconstitutional conduct. Bellamy v. Bradley, 729 F.2d 416, 421 (6<sup>th</sup> Cir. 1984). “At a minimum, a § 1983 plaintiff must show that a supervisory official at least implicitly authorized, . . . approved[,] or knowingly acquiesced in the unconstitutional conduct of the offending subordinate.” Id. Thus, to survive summary judgment, a plaintiff “only need show that an issue of material fact exists as to whether the supervisory defendants were aware [of] a risk of substantial injury to the inmates and were deliberately indifferent to that risk.” Curry v. Scott, 249 F.3d 493, 508 (6<sup>th</sup> Cir. 2001).

Defendant Gates attached an affidavit to Defendants’ motion attesting that as a part of her training for use of freeze+p she was sprayed with freeze+p, and that she was not aware of any permanent damage caused to someone after getting sprayed with freeze+p. Aff. Velda Gates at ¶9. Plaintiff has not submitted any evidence to contradict Defendant Gates’ statement that she was unaware of a substantial risk that Plaintiff would experience serious harm when he was sprayed with freeze+p. Moreover, although harm can be serious without being permanent, Plaintiff fails to allege what “serious harm” could have or did result from him being sprayed with freeze+p. Therefore, the Court finds that no genuine issue of material fact exists as to Defendant Gates’ liability.

Finally, as to Defendant Watkins, the Court finds that other than Plaintiff’s statements in the Complaint that “Officer Watkins #05096 ran over and attempted to spray [Plaintiff] with a can of freeze+p,” and that Defendant Watkins “physically assaulted” him, the record contains no mention of Defendant Watkins’ role in the shakedown incident, or of any specific allegations that Defendant Watkins actually inflicted any form of punishment on Plaintiff. Compl. at 2, 3. In the Sixth Circuit, “damages claims against government officials alleged to arise from violations of constitutional rights cannot be founded upon conclusory, vague or general allegations, but must ... allege facts that show

the existence of the asserted constitutional rights violation recited in the complaint and what each defendant did to violate the asserted right.” Terrance v. Northville Reg’l Psychiatric Hosp., 268 F.3d 834, 842 (6<sup>th</sup> Cir. 2002) (emphasis in original). Plaintiff has failed to meet this burden with respect to Defendant Watkins. Therefore, the Court finds that no genuine issue of material fact exists as to the liability of Defendant Watkins. Accordingly, the Court GRANTS Defendants’ motion with respect to the excessive force claim as alleged against Defendants Gates and Watkins, and DENIES Defendants’ motion with respect to the excessive force claims as alleged against Defendant Gales.

### **B. Inadequate Medical Care**

The Eighth Amendment’s prohibition against cruel and unusual punishment obligates prison officials to provide prisoners with adequate medical care. Estelle v. Gamble, 429 U.S. 97, 103 (1976). In Estelle, the Supreme Court held that “deliberate indifference to serious medical needs of prisoners constitutes the ‘unnecessary and wanton infliction of pain’” in violation of the Eighth Amendment. Id. at 104. This holds true where the indifference is manifested through improper treatment and diagnosis by a jail physician, officers intentionally denying or delaying medical treatment, or officers interfering with the administration of treatment once prescribed. Id. at 104-105. In addition, as stated above, Plaintiff’s constitutional claims cannot be stated vaguely or generally, but must be specific and particular. Terrance, 268 F.3d at 842. Furthermore, where the plaintiff alleges that the constitutional harm was the result of a delay in providing medical care, the plaintiff must “place verifying medical evidence in the record to establish the detrimental effect of the delay in medical treatment to succeed.” Napier v. Madison County, Kentucky, 238 F.3d 739, 742 (6<sup>th</sup> Cir. 2001) (internal quotations and citations omitted).

In the instant case, the Court finds that Plaintiff has not plead with particularity the bases of his inadequate medical care claim. Plaintiff points to no specific conduct by Medic Sims (who notably is not named as a defendant) which constituted an inadequate examination or diagnosis. With respect to Defendants Gales and Watkins, Plaintiff fails to specify what role, if any, they played in depriving Plaintiff of proper medical care once taken to the Lower Level Medical. Plaintiff does allege that Defendant Gates refused to take the handcuffs off of him preventing Medic Sims from being able to examine him. However, Defendants attached the affidavit of Medic Sims to their motion wherein Medic Sims states that although he does not specifically remember the examination of Plaintiff, “[he had] never had an officer interfere with [his] examination of an inmate by not removing the handcuffs of an inmate if [he made] that request of the officer.” Aff. Rodney Sims at ¶4. Plaintiff offers no evidence which contradicts Medic Sims’ affidavit testimony. Furthermore, Plaintiff placed no verified medical evidence in the record which demonstrates what effect the alleged delay in treatment had on his condition. Therefore, Plaintiff fails to set forth sufficient facts which create a genuine issue of fact as to his inadequate medical care claim. Accordingly, Plaintiff’s inadequate medical care claim is dismissed as to all Defendants.

#### **IV. Conclusion**

For the foregoing reasons, the Court GRANTS in part and DENIES in part Defendants’ motion for summary judgment.

**IT IS SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 2003

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**BERNICE BOUIE DONALD**  
**UNITED STATE DISTRICT JUDGE**