UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 18-CV-14167-MIDDLEBROOKS

LYNN EDWARD HAMLET,

Plaintiff,

v.

OFFICER BRANDON HOXIE,

Defendant.
_____/

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE comes before the Court on Defendant's Motion for Summary Judgment ("Motion") (DE 108). I have considered the Motion, Plaintiff's Amended Complaint (DE 26), Defendant's Statement of Material Facts in Support of Summary Judgment (DE 112), Plaintiff's Sworn Affidavit Opposing Summary Judgment (DE 115), Defendant's Reply (DE 117), Defendant's Reply Statement of Material Facts (DE 119), the supporting exhibits, and the record in this case. For the reasons stated below, the Motion is granted.

I. BACKGROUND

A. Factual Background

The following facts are taken from Plaintiff Lynn Edward Hamlet's Amended Complaint (DE 26), his deposition testimony (DE 112-1), and his Sworn Affidavit Opposing Summary Judgment (DE 115). Defendant Officer Brandon Hoxie, for his part, disputes only the fact that he was on duty in the unit where Mr. Hamlet was housed on the night in question. Thus, to the extent the alleged events occurred, Officer Hoxie contends that he was not involved.

On April 25, 2018, Mr. Hamlet was housed in the confinement unit at the Martin Correctional Institution ("Martin CI"). Pl.'s Dep. Tr. (DE 112-1 at 13:20–22). Late that evening, Mr. Hamlet was escorted to the handicap shower by two officers. (*Id*. at 29:1–9). After he began showering, Mr. Hamlet noticed a small potato chip bag containing human feces floating in approximately ankle-deep standing water in the shower. (*Id*. at 35:1–36:7). The bag, an approximately 2.5 ounce, single-serving size bag of potato chips, had been left in the shower by an inmate who had been confined there all day and had to relieve himself in the shower. (*Id*. at 31:12–23); (DE 115 at 5). The potato chip bag was not visible to Mr. Hamlet when he first stepped into the shower, and Officer Hoxie, whose job it was to supervise the unit, never checked to see if the shower was clean before Mr. Hamlet entered. (DE 112-1 at 34:19–25); (DE 115 at 20). In addition to the potato chip bag of feces, Mr. Hamlet also noticed urine in the shower. (DE 112-1 at 35:6); (DE 26 at 4).

Upon noticing the potato chip bag containing feces and the urine in the shower, Mr. Hamlet called out to the officers to be let out of the shower. (DE 112-1 at 14:13–15). Officer Hoxie responded by accusing Mr. Hamlet of defecating in the shower, saying "you did it." (DE 115 at 15, 20); (DE 112-1 at 14:15–17). Officer Hoxie initially opened the door to let Mr. Hamlet out, but then "change[d] his mind and [pushed] [him] back in the shower." (DE 115 at 6). While Mr. Hamlet was showering, the urine and feces were "bumping up against [his] legs," and while he was able to move to a higher area of the shower stall away from the bag of feces, he was unable to avoid getting feces and urine on his ankles. (DE 112-1 at 35:6–7; 39:16–20). Mr. Hamlet does not claim that he lacked running water at any point during his shower, but he was apparently unable to rinse the human waste off his ankles. Mr. Hamlet was locked in the handicap shower for approximately 30 to 40 minutes, and during that time the feces and urine "covered all [his] open

wounds" (referring to cuts on Mr. Hamlet's ankles caused by his diabetes, which makes him scratch himself at night). (*Id*. at 15:2–4, 39:23–25, 40:22).

While Mr. Hamlet was locked in the shower, Officer Hoxie "went into [his] cell and took all the clean clothes and left [him] with nothing to clean the feces and urine off [him]self." (DE 26 at 5). Mr. Hamlet recalls being given a towel by one of the officers prior to entering the shower, yet when he arrived back at his cell, he claims he "had nothing to clean the feces and urine off of [himself]." (DE 112-1 at 15:7, 29:23–30:3). Mr. Hamlet attempted to use the water in his cell's toilet and his bare hands to get the human waste off his ankles, but he was unsuccessful. (*Id*. at 15:6–12). Mr. Hamlet never asked Officer Hoxie for anything to clean himself. (*Id*. at 43:16–18).

Mr. Hamlet developed a bacterial infection as a result of his exposure to human waste, which infected his "urinary tract and liver." (DE 26 at 4). It is unclear when exactly Mr. Hamlet became sick. At his deposition, Mr. Hamlet testified that he awoke the next morning, April 26, 2018, feeling very ill. (DE 112-1 at 15:15–16). In his Sworn Affidavit, however, Mr. Hamlet says that he became sick "the first week of May" from a bacterial infection. (DE 115 at 21). In the very next sentence, however, Mr. Hamlet states that he became "very ill" within 24 hours as a result of the feces and urine infecting his diabetic cuts. (*Id*.) In any event, when Mr. Hamlet began feeling ill, two nurses "came and took [him] to the infirmary to shower and dress and [he] was then rush[ed] to Larkin Community Hospital." (DE 115 at 14); (DE 112-1 at 18:14–18). The bacterial infection "completely destroyed" Mr. Hamlet's heart valves, necessitating heart valve surgery to save his life. (DE 112-1 at 18:18–21). Mr. Hamlet stayed in the hospital for two months, during which time he was unable to walk, stand, or use the restroom on his own. (*Id*. at 17:6–23). Mr. Hamlet has not produced any medical records, however, indicating that he was ever treated for a bacterial infection. The two medical reports produced by Officer Hoxie indicate that on April 29,

2018, Mr. Hamlet was put into the infirmary for hypoglycemia and on May 6, 2018, Mr. Hamlet refused to take his Hepatitis C medication. *See* Def.'s Ex. 2 (DE 112-2); Def.'s Ex. 3 (DE 112-3).

B. Procedural History

On April 18, 2018, Mr. Hamlet filed a complaint under 42 U.S.C. § 1983 against Martin CI and three correctional officers: Sergeant Coney, Officer Schultheiss and Lieutenant Pensing. (DE 1). The first complaint did not name Officer Hoxie as a defendant. The complaint alleged that while Mr. Hamlet was in the chow hall, Officer Schultheiss, "called [him] a bitch for no other reason than [Mr. Hamlet] writing her and her husband up for violations at Martin." (*Id*. at 3). Mr. Hamlet alleged that Officer Schultheiss placed him in solitary confinement as a punishment for taking a 3-ounce bag of rice out of the dining area. (*Id.*) He claimed that because he is a diabetic and had just come out of a diabetic coma, he needed to take a snack with him to eat after taking his insulin. (*Id.* at 3, 5). Mr. Hamlet alleged that this punishment was in retaliation for a complaint he filed against Officer Schultheiss. (*Id*. at 5). Mr. Hamlet also alleged that Lieutenant Pensing assisted Officer Schultheiss in placing him in solitary confinement, and that this punishment violated Department of Corrections policy. (*Id*. at 7).

On June 27, 2018, I adopted the Report and Recommendation of the Magistrate Judge recommending dismissal for lack of prosecution. (DE 8). The Magistrate Judge concluded that because Mr. Hamlet had failed to comply with the Court's order requiring him to pay the filing fee or file a properly documented motion for leave to proceed *in forma pauperis*, he had abandoned the lawsuit. (DE 5 at 1). Following the Court's dismissal, on July 10, 2018, Mr. Hamlet filed a Motion for Leave to Amend his Complaint, explaining that he had been unable to comply with the Court's order because he had been hospitalized and had not received his mail. (DE 10, 11). His Motion for Leave to Amend re-alleged the facts in his original complaint and also contained new

allegations against three new defendants: Lieutenant Schultheiss (Officer Schultheiss' husband), Officer Hoxie, and John Mitchell (food service director). (DE 10 at 1). Relevant here, the Motion for Leave to Amend added the allegation that Officer Hoxie confined Mr. Hamlet in a handicapped shower stall containing human feces in a potato chip bag, causing a near-fatal bacterial infection. (*Id*. at 10).

On December 19, 2018, I vacated my order dismissing the case for lack of prosecution (DE 15) and on July 26, 2019, the Magistrate Judge ordered Mr. Hamlet to file an Amended Complaint (DE 25). On August 22, 2019, Mr. Hamlet filed his Amended Complaint in response to the Court's order. (DE 26) Liberally construed, the Amended Complaint stated three causes of action under section 1983: (1) a First Amendment retaliation claim; (2) an Eight Amendment claim for cruel and unusual punishment; and (3) an Eight Amendment claim for deliberate indifference to serious medical needs. (*Id*.) The Amended Complaint named six defendants: (1) Martin CI; (2) Officer K. Schultheiss, (3) "Captain Schultheiss" (whom the Amended Complaint also refers to as "Lt. Schultheiss"), (4) Captain Bensing; (5) Mr. Mitchell; and (6) Officer Hoxie. (*Id*. at 2–6). The Amended Complaint re-alleged that Officer Hoxie "lock[ed] the Plaintiff in a shower with feces and human urine floating around inside the shower, that got in the Plaintiff['s] urinary tract and liver," causing a bacterial infection that required him to have heart valve surgery and nearly cost him his life. (DE 26 at 4–7).

On December 31, 2019, I adopted the Magistrate Judge's Report and Recommendation (DE 28) to dismiss all defendants except Officer Hoxie (DE 29). The Magistrate Judge found that Mr. Hamlet had failed to state a claim for constitutional violations against five of the six defendants, but had adequately stated an Eight Amendment claim for cruel and unusual punishment against Officer Hoxie based on the allegation that Officer Hoxie "locked [Plaintiff] in

a shower with feces and urine and refused to let him out." (DE 28 at 8). On May 11, 2020, I adopted the Magistrate Judge's Report and Recommendation to deny Officer Hoxie's Motion to Dismiss, finding that Mr. Hamlet had exhausted his administrative remedies prior to filing suit. (DE 43, 50). Following discovery, on February 24, 2021, Officer Hoxie moved for summary judgment. (DE 108).

II. SUMMARY JUDGMENT STANDARD

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The movant "always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (quoting Fed. R. Civ. P. 56(c)(1)(A)).

Where the non-moving party bears the burden of proof on an issue at trial, the movant may simply "[point] out to the district court that there is an absence of evidence to support the nonmoving party's case." *Id.* at 325. After the movant has met its burden under Rule 56(c), the burden shifts to the non-moving party to establish that there is a genuine issue of material fact. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 585 (1986). "The non-movant's response must be tailored to the method by which the movant carried its initial burden." *Hinson v. United States*, 55 F. Supp. 2d 1376, 1380 (S.D. Ga. 1998), *aff'd,* 180 F.3d 275 (11th Cir. 1999). "If the movant presented evidence affirmatively negating a material fact, the non-movant 'must respond with evidence sufficient to withstand a directed verdict motion at trial on the material fact sought to be negated.'" *Id.* (citing *Fitzpatrick v. City of Altanta*, 2 F. 3d 1112, 1116

(11th Cir. 1993)). "If the movant demonstrated an absence of evidence on a material fact, the non-movant must either show that the record contains evidence that was 'overlooked or ignored' by the movant, or 'come forward with additional evidence sufficient to withstand a directed verdict motion at trial based on the alleged evidentiary deficiency.'" *Id.* (citing *Fitzpatrick*, 2 F. 3d at 1116)).

III. DISCUSSION

A. Mr. Hamlet has Exhausted his Administrative Remedies

Under the Prison Litigation Reform Act ("PLRA"), "[n]o action shall be brought with respect to prison conditions under section 1983 . . . by a prisoner . . . until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). "The plain language of the statute makes exhaustion a precondition to filing an action in federal court." *Higginbottom v. Carter*, 223 F.3d 1259, 1261 (11th Cir. 2000) (quoting *Freeman v. Francis*, 196 F.3d 641, 645 (6th Cir. 1999)). "[T]he PLRA's exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong." *Porter v. Nussle*, 534 U.S. 516, 532 (2002).

Officer Hoxie reasserts his exhaustion defense, which this Court rejected when it denied his Motion to Dismiss (DE 50). In that Order, I adopted the Magistrate Judge's finding that Mr. Hamlet had properly exhausted his administrative remedies by filing a grievance against Officer Hoxie on April 28, 2018, which notified prison officials of the shower incident. (DE 43 at 2–3 (citing Def.'s Ex. E, DE 36-5)). Officer Hoxie argues that he may reassert this defense, however, because when I denied his Motion to Dismiss, it was not yet known that the shower incident had in fact occurred seven days after Mr. Hamlet initiated this lawsuit. (DE 108 at 7-9). According to

Officer Hoxie, because the PLRA requires exhaustion of all claims *before* the plaintiff files suit, I must therefore dismiss this action without prejudice for failure to exhaust. (*Id*.)[1]

Officer Hoxie is incorrect that a claim in an amended complaint arising after a prisoner files suit cannot be exhausted under the PLRA. In *Barnes v. Briley*, the Seventh Circuit held that "[t]he filing of the amended complaint [i]s the functional equivalent of filing a new complaint . . . and it [i]s only at that time that it bec[omes] necessary to have exhausted the administrative remedies . . . " 420 F.3d 673, 678 (7th Cir. 2005). In *Barnes*, the plaintiff initiated the action in October of 2000, and in August of 2003, the district court permitted the plaintiff to amend his complaint to add new claims against new defendants concerning incidents that occurred after the plaintiff initiated the lawsuit. *Id*. at 676. The Seventh Circuit affirmed, holding that because the plaintiff had complied with prison grievance procedures regarding these new incidents, he had "complied with § 1997e(a) by exhausting his administrative remedies for his § 1983 claims before amending his complaint to add those claims." *Id.* at 677. The Seventh Circuit added that the alternative approach would require the plaintiff to "shoulder an impossible task—to exhaust remedies not yet pertinent to the allegations of the filed complaint." *Id*. at 678.

Here, Mr. Hamlet was granted leave to proceed with the claim against Officer Hoxie in his Amended Complaint. *See* (DE 28, 29). Mr. Hamlet's Amended Complaint was, in effect, a supplemental pleading under Federal Rule of Civil Procedure 15(d) because it alleged events that occurred after the original complaint was filed. Rule 15(d) states: "on motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be

[1] Officer Hoxie does not otherwise present arguments that require me to reconsider the Magistrate Judge's findings at the Motion to Dismiss stage that (1) Mr. Hamlet's grievance adequately notified prison officials of the shower incident and (2) the prison never invoked its procedural rules, but rather returned Mr. Hamlet's grievance without action, excusing him from filing an appeal. (DE 43 at 3–6).

supplemented." Fed. R. Civ. P. 15(d). Because Rule 15(d) permits plaintiffs to supplement their pleadings with claims arising after the original complaint is filed, it follows then that prisoners supplementing their pleadings in this manner can only exhaust their supplemental claims after the original complaint is filed. If the contrary view were correct, then the PLRA would prohibit prisoners from availing themselves of Rule 15(d), and the Eleventh Circuit has held that "there is no conflict" between Rule 15 and the PLRA. *Harris v. Garner*, 216 F. 3d 970, 982 (11th Cir. 2000).

Relying on *Harris*, Officer Hoxie contends that "the Eleventh Circuit explicitly rejected an argument that an amended pleading authorized under Rule 15(d) . . . could overrule the PLRA's restriction." (DE 108 at 8). But *Harris* does not hold that the PLRA's exhaustion requirement precludes supplemental claims under Rule 15(d); there, the Eleventh Circuit addressed a different provision of the PLRA, section 1997e(e), which deals not with exhaustion but with the requirement that prisoners show "physical injury or the commission of a sexual act" in any claim for mental or emotional injury. § 1997e(e). In *Harris*, the question was whether the PLRA applied *at all* to plaintiffs who were still incarcerated when they initiated the lawsuit but had been released from prison when they filed their amended complaint. The Eleventh Circuit held that "[t]he status that counts, and the only status that counts, for purposes of section 1997e(e) is whether the plaintiff was a 'prisoner confined in a jail, prison, or other correctional facility' at the time the federal civil action was 'brought,' i.e., when it was filed." *Id*. at 981.

But *Harris* acknowledged that this rule was not a blanket proscription on prisoners filing Rule 15(d) claims arising after their lawsuit was filed, noting that "[i]n proper circumstances and when the requirements contained in Rule 15 are met, the rule does permit amendments or supplements to pleadings in order to bring to the attention of the court changes in the facts." *Id*. In

Harris, "the change in the facts (the post-filing release of the plaintiffs) . . . ma[de] no difference whatsoever under section 1997e(e)," and thus the plaintiffs could not use Rule 15(d) simply as an end-run around the PLRA's limitation on recovery. *Id*. But here, by contrast, the change in facts *does* make a difference under a different provision of the PLRA—section 1997(e)(a)—which requires a prisoner to exhaust administrative remedies before filing suit. If a prisoner has been granted leave to file supplemental claims arising after the lawsuit is filed, that prisoner has no choice but to exhaust these new claims after the lawsuit is filed. The holding in *Harris* does not conflict with the Seventh Circuit's holding in *Barnes* allowing post-filing exhaustion; the formerly-incarcerated plaintiffs in *Harris* were still permitted to file their supplemental pleadings under Rule 15(d)—only subject to the restrictions of the PLRA. *Harris* does not hold that the PLRA prohibits a prisoner from filing supplemental claims at all.

Lastly, I would note that the outcome Officer Hoxie urges—dismissal of the case without prejudice to allow Mr. Hamlet to file a new civil action—would conflict with a core purpose of the PLRA: "to conserve scarce judicial resources." *Alexander v. Hawk*, 159 F.3d 1321, 1327 (11th Cir. 1998). It makes little sense to require Mr. Hamlet to file a whole new lawsuit now, at the summary judgment stage, three years into the litigation. As the Eleventh Circuit stressed in *Harris*, "the intent of Congress behind section 1997e(e) was to reduce the number of prisoner lawsuits filed." *Harris*, 216 F.3d at 981. Requiring Mr. Hamlet to file a new lawsuit at this stage would contravene that intent. Accordingly, I find that Mr. Hamlet has exhausted his administrative remedies under § 1997e(a).

B. Officer Hoxie is Entitled to Summary Judgment on the Merits

Although Officer Hoxie cannot prevail on his exhaustion defense, he is nonetheless entitled to summary judgment on the merits. Even accepting every detail in Mr. Hamlet's story as true,

Officer Hoxie's actions fell far short of an Eight Amendment violation.[2] To establish that conditions of confinement violate the Eighth Amendment, a plaintiff must satisfy each element of a multi-tiered inquiry. The first element sets an objective hurdle, where "a prisoner must prove that the condition he complains of is sufficiently serious to violate the Eighth Amendment." *Chandler v. Crosby*, 379 F.3d 1278, 1289 (11th Cir. 2004) (quotation marks omitted). An objective Eighth Amendment violation "must be extreme" and deprive the prisoner "of the minimal civilized measure of life's necessities." *Id.* (quotation marks omitted) (quoting *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981)). The second requisite element is a subjective one: "[T]he prisoner must show that the defendant prison officials acted with a sufficiently culpable state of mind with regard to the condition at issue." *Id.* (quotation marks omitted). Negligence is not enough; the officer "must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Id.* at 1289–90 (quoting *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)).

Here, Mr. Hamlet can satisfy neither the objective nor subjective prongs of an Eighth Amendment claim. First, his exposure to a small potato-chip bag's worth of feces, and perhaps some urine, for at most 40 minutes was not extreme enough to satisfy the objective component of an Eighth Amendment claim. The Eleventh Circuit has recognized that "[e]xposure to human waste, like few other conditions of confinement, evokes both the health concerns emphasized in

[2] Officer Hoxie also argues that the duty roster for the evening of April 25, 2018 and the Declaration of Asst. Warden Holtz conclusively establish that he was not working in the confinement housing unit when the alleged incident occurred. (DE 108 at 10); Def's Ex. B (DE 108-2 at 5; ¶¶ 5-6). He relies on *Scott v. Harris*, which held that where a videotape discredits one side's version of events, the court must "view[] the facts in the light depicted by the videotape" on summary judgment. 550 U.S. 372, 379–80 (2007). The Eleventh Circuit has held, however, that the forms of evidence Officer Hoxie offers here—prison records and officer testimony—are not as conclusive as a videotape and thus do not negate a dispute of material fact. *See Sears v. Roberts*, 922 F.3d 1199, 1208 (11th Cir. 2019) (holding that there is "a big difference" between the video evidence presented in *Scott*, which "blatantly contradicted" the plaintiff's account, and "affidavits . . . disciplinary reports . . . reports of force and incident reports," which merely "pit the correctional officers' word against [the plaintiff's] word.")

Farmer and the more general standards of dignity embodied in the Eighth Amendment." *Brooks v. Warden*, 800 F.3d 1295, 1304 (11th Cir. 2015) (quoting *DeSpain v. Uphoff*, 264 F.3d 965, 974 (10th Cir. 2001)). "Allegations of unhygienic conditions, when combined with the jail's failure to provide detainees with a way to clean for themselves with running water or other supplies" may state a claim for relief. *Id.* (quoting *Budd v. Motley*, 711 F.3d 840 (7th Cir. 2013)). In *Brooks*, the plaintiff alleged that he was "forced to lie in direct and extended contact with his own feces without any ability to clean himself, while confined to a hospital bed in maximum security constraints." *Id*. at 1305. He was "denied the ability to use the bathroom or clean himself for a full two days." *Id*.

Here, Mr. Hamlet was subjected to conditions of confinement that were significantly less extreme and unsanitary than what was alleged in *Brooks*. At his deposition, Mr. Hamlet testified that he was exposed to feces in a 2.5-ounce potato chip bag, as well as some urine, for no longer than 40 minutes while he was in the shower. (DE 112-1 at 31:12–23, 39:23–25). Mr. Hamlet admits that he had running water in the shower and does not claim that the water was shut off at any point while he was showering. (*Id*. at 36:16–17). He also concedes that he was able to stand at a higher level in the shower where he could avoid the bag of feces. (*Id*. at 39:16–20). Mr. Hamlet fails to explain why, given the small amount of feces and the availability of running water, he was unable to rinse the feces from his ankles while he was in the shower. He also alleges that there was urine in the shower, but this allegation is vague and conclusory; he does not describe how much urine was in the shower or where it was located. Mr. Hamlet further recalls being given a towel by one of the officers prior to his shower, which he could have used to clean the waste from his ankles. (*Id*. at 29:23–30:3).

Officer Hoxie points to two cases that illustrate why the conditions described here did not violate the Eighth Amendment. In *Saunders v. Sheriff of Brevard Cty.*, the plaintiffs alleged that "inmates would urinate, defecate, and ejaculate in their cells, and that the authorities wouldn't clean the resulting residue for several days." 735 F. App'x 559, 562 (11th Cir. 2018). "[U]rine would splash from the cell's communal toilet onto an inmate's sleeping space." *Id*. In addition, the jail would deprive inmates of soap, utensils and toilet paper for unreasonable periods of time. *Id*. The Eleventh Circuit found that despite the "undoubtedly unpleasant conditions," the plaintiffs could not overcome the defendants' qualified immunity defenses because prior case law had not clearly established that the alleged conditions were "unconstitutionally unsanitary." *Id*. at 567. And in *Alfred v. Bryant*, the Eleventh Circuit held that "sleeping on a steel bed without a mattress for eighteen days, though uncomfortable, is not so extreme as to violate contemporary standards of decency." 378 F. App'x 977, 980 (11th Cir. 2010). "Similarly, having to use a toilet which lacks proper water pressure and occasionally overflows is unpleasant but not necessarily unconstitutional." *Id.*

Here, the conditions Mr. Hamlet was exposed to were even less extreme than what was alleged in *Saunders* and *Alfred*. Mr. Hamlet was exposed to a minimal amount of waste for at most 40 minutes while confined in a shower that had running water. Thus, he cannot satisfy the objective prong of an Eighth Amendment violation.

Second, Mr. Hamlet has not established that Officer Hoxie was "aware of facts from which the inference could be drawn that a substantial risk of serious harm exist[ed]," and that he also drew that inference. *Farmer*, 511 U.S. at 837. Mr. Hamlet concedes that Officer Hoxie was not aware of the potato chip bag of feces in the shower before Mr. Hamlet entered. (DE 112-1 at 34:19–25); (DE 115 at 20). At his deposition, Mr. Hamlet testified that the potato chip bag was not visible

from outside the shower, and he admits in his Affidavit that Officer Hoxie "never check[ed] to see [if] the shower [was] clean." (DE 112-1 at 34:19–25); (DE 115 at 5). Moreover, Mr. Hamlet does not claim that he ever told Officer Hoxie that the feces from the potato chip bag had become stuck to open cuts on his ankles, and he concedes that he never asked Officer Hoxie for towels or linens to clean himself. (DE 112 at 43:16–18). Thus, even if one infers that Officer Hoxie removed Mr. Hamlet's clothes and bedding from his cell to prevent Mr. Hamlet from cleaning himself (and the record does not support that inference), Mr. Hamlet still cannot demonstrate that Officer Hoxie was aware of Mr. Hamlet's risk of infection. Accordingly, Mr. Hamlet cannot satisfy the subjective prong because no reasonable juror could infer that Officer Hoxie was aware of a risk of harm to Mr. Hamlet and deliberately disregarded that risk.

For the foregoing reasons, it is **ORDERED AND ADJUDGED** that Defendant's Motion for Summary Judgment (DE 108) is **GRANTED.** Final Judgement will be entered by separate Order.

SIGNED in Chambers at West Palm Beach, Florida, this 26th day of April, 2021.

Donald M. Middlebrooks
United States District Judge

cc: Counsel of Record

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