

SLEET, District Judge.

I. INTRODUCTION

Major S. Foster filed this *pro se* prisoner civil rights action on December 13, 1999. In his complaint, Foster alleges that on October 13, 1999, a correctional officer, Corporal J.F. Mumford, assaulted him in violation of his constitutional rights. At the time of the alleged assault, Foster was incarcerated at the Sussex Correctional Institute (“S.C.I.”), which is located in Georgetown, Delaware. For this alleged wrong, Foster seeks monetary relief for his physical injuries, mental and emotional distress, and the discrimination he encountered. Presently before the court is the defendant’s motion to dismiss. The court will treat the motion as one for summary judgment, however, because the moving party attached documents outside of the pleadings for the court’s consideration. After considering the submissions, the court will deny summary judgment because it is not yet clear what events transpired in connection with the assault. Specifically, it is not clear whether the defendant acted intentionally and maliciously as Foster contends. Thus, genuine issues of material fact prevent the court from ruling as a matter of law at this juncture. The following sections explain the reasons for the court’s denial of the defendant’s summary judgment motion more thoroughly.

II. BACKGROUND

A. Relevant Facts

According to Foster, Corporal Rygiel (“Rygiel”), who is also named as a defendant, forcibly grabbed him from his chair at the conclusion of a legal proceeding in Family Court after the bailiff requested everyone to rise. Foster alleges that Corporal Mumford (“Mumford”) then handcuffed him. Foster claims that he was in the process of gathering up his papers at the time the request was made, making it difficult to rise immediately. After they left the courtroom, Foster, Mumford, and Rygiel

entered an elevator where Mumford uttered obscenities at Foster and then punched him in his chest. Foster's hands were handcuffed and his feet were shackled during the elevator ride.

Mumford tells a slightly different version of events. Mumford contends that the hearing in Family Court did not resolve in Foster's favor, causing Foster's demeanor to change noticeably. Mumford also asserts that the bailiff, looking directly at Foster after he failed to rise the first time, repeated his request two more times, which Foster also disregarded. It was at that point that Mumford and Rygiel lifted Foster from both sides, handcuffed him, and escorted him to the elevator. Mumford states that he and Rygiel advised Foster in the elevator to comply with the court's orders in the future because his earlier behavior in the courtroom was unacceptable. Mumford denies allegations of any use of excessive force. Mumford also contends that Foster admitted to the prison nurse that he sustained his chest injury while playing basketball.

In a grievance filed with S.C.I. regarding this incident, Foster asserted that he had already been handcuffed when the bailiff made the request. This appears to contradict Foster's allegation in his complaint that Mumford handcuffed him after the two officers lifted him from his chair. An investigation of the alleged assaults yielded no evidence to substantiate any of Foster's claims. Therefore, S.C.I. closed the case.

B. Procedural History

On March 20, 2000, Mumford moved to dismiss the complaint. However, he attached to his motion a sworn affidavit and a number of additional materials outside of the pleadings. Consequently, the court treated the motion as one for summary judgment. *See* Fed. R. Civ. P. 12(b) ("If, on the motion . . . to dismiss for failure . . . to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for

summary judgment and disposed of as provided in Rule 56 . . .”). In that same order, dated July 7, 2000, the court notified Foster of the conversion to summary judgment and instructed him to respond with appropriate materials to properly oppose the motion. *See Neal v. Kelly*, 963 F.2d 453, 455-56 (D.C. Cir. 1992) (requiring that plaintiff be given sufficient notice of which legal standard will apply so that he may properly oppose the motion.). In order to oppose a summary judgment motion, appropriate materials may include: the pleadings, depositions, answers to interrogatories and requests for admissions, as well as any affidavits that a party obtains. *See Fed. R. Civ. P. 56(c)*.

In opposition to Mumford’s dispositive motion and in response to the court’s July 7, 2000 order, Foster submitted a memorandum on August 25, 2000, asserting that several witnesses, including the defendants, Mumford and Rygiel, observed the incident on October 13, 1999. Foster also asserts that witnesses at S.C.I. can attest that Mumford and Rygiel failed to follow procedures in the rule book for correctional officers. In addition, Foster alleges that Mumford assaulted him for discriminatory reasons. Finally, he claims that he reported a basketball injury to the prison nurse because he was afraid of retaliation and harassment from Mumford. Although the allegations contained in Foster’s memorandum failed to provide any evidence to rebut Mumford’s affidavit and other submissions that clearly state that no excessive force was used, Foster still had an opportunity to provide evidence outside of the pleadings to support his claim. Therefore, Foster was given a “reasonable opportunity to present all material [which is] pertinent to . . . a motion [for summary judgment under] Rule 56.” *See Fed. R. Civ. P. 12(b)*. Thus, the court will treat Mumford’s motion as a motion for summary judgment.

III. STANDARD OF REVIEW

This court can grant summary judgment only if there are no genuine issues of material fact

and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). An issue is “genuine” if, given the evidence, a reasonable jury could return a verdict in favor of the non-moving party. *See, e.g., Abraham v. Raso*, 183 F.3d 279, 287 (3d Cir. 1999) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-51 (1986)); *Lloyd v. Jefferson*, 53 F. Supp. 2d 643, 654 (D. Del. 1999) (citing same). A fact is “material” if it bears on an essential element of the plaintiff’s claim. *See, e.g., Abraham*, 183 F.3d at 287; *Lloyd*, 53 F. Supp. 2d at 654. On summary judgment, the court cannot weigh the evidence or make credibility determinations. *See Anderson*, 477 U.S. at 255 (“Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict.”); *International Union, United Auto., Aerospace & Ag. Implement Workers of America, U.A.W. v. Skinner Engine Co.*, 188 F.3d 130, 137 (3d Cir. 1999) (“At the summary judgment stage, a court may not weigh the evidence or make credibility determinations; these tasks are left to the fact finder.”). Instead, the court can only determine whether there is a genuine issue for trial. *See Abraham*, 183 F.3d at 287. In doing so, the court must look at the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences and resolving all reasonable doubts in favor of that party. *See, e.g., Pacitti v. Macy’s*, 193 F.3d 766, 772 (3d Cir. 1999). With this standard in mind, the court will address Mumford’s motion.

IV. DISCUSSION

In order to recover against the defendants, Foster must show that he was deprived of a constitutional right by a person acting under the color of state law. *See* 42 U.S.C. §1983 (1994). There is no dispute that Mumford and Rygiel were acting under the color of state law. At the time of the occurrence of the alleged conduct, they were correctional officers at the state correctional

institution where Foster was incarcerated. *See Cespedes v. Coughlin*, 956 F. Supp. 454, 465 (S.D.N.Y. 1997) (noting that it was “undisputed that [the] defendants . . . acted pursuant to their authority as prison officials under color of New York state law”); *cf. Street v. Corrections Corp. of Am.*, 102 F.3d 810, 814 (6th Cir. 1996) (“The defendants were ‘acting under color of state law’ in that they were performing the ‘traditional state function’ of operating a prison.”). Thus, the only question raised by Mumford’s dispositive motion is whether the defendants violated any of Foster’s constitutional rights by using excessive force while in the officers’ custody.

According to Foster, the manner in which the defendants lifted him up from his chair as well as the assault that occurred in the elevator violated his constitutional rights. In particular, Foster contends that when he delayed in responding to the bailiff’s request to rise, Mumford and Rygiel grabbed him and lifted him from the chair and placed him in handcuffs. Foster also claims they then brought him into an elevator where Mumford uttered obscenities at him and punched him in the chest. According to Foster, Rygiel witnessed the incident in the elevator but did not participate in the alleged assault. Upon return to S.C.I., Foster visited the nurse and reported that he suffered an injury while playing basketball.

In order to maintain discipline and order, prison officials are afforded great deference to execute appropriate procedures. *Hudson v. McMillan*, 503 U.S. 1, 6 (1992). In order for an act to amount to a constitutional violation, the court must determine whether “the force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” *Hudson*, 503 U.S. at 6-7. Therefore, in assessing whether an official’s use of force was excessive, the court must engage in a two-part inquiry, ensuring that both the objective and the subjective requirements are met. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). The objective prong of the

test requires the court to ascertain whether the official's conduct was "harmful enough" to establish a constitutional violation while the subjective prong mandates an inquiry into whether the officials charged possessed a "sufficiently culpable state of mind" at the time of the occurrence. *Hudson*, 503 U.S. at 8 (citing *Wilson v. Seiter*, 501 U.S. 294, 297 (1991) ("[O]nly the unnecessary and wanton infliction of pain implicates the Eight Amendment")).

In addition to examining the extent of any injury suffered, other factors used in evaluating an excessive force claim include: the need for application of force, the relationship between that need and the amount of force used, the threat that the officials reasonably perceived, and any efforts used to mitigate the severity of a forceful response. *Hudson*, 503 U.S. at 7.

Examination of what constitutes "sufficient harm" varies according to the context of the claim at issue. A claim alleging excessive physical force does not rise to a constitutional violation unless the force used is "repugnant to the conscience of mankind." *Hudson*, 503 U.S. at 9 (citing *Johnson v. Glick*, 481 F.2d 1028, 1033 (2d Cir. 1973) ("Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers, violates a prisoner's constitutional rights.")). To satisfy the subjective prong, the plaintiff must establish that the prison official applied force "maliciously and sadistically for the very purpose of causing harm". *Farmer*, 511 U.S. at 835. Alternatively, excessive force is established if the plaintiff shows that force was used with "a knowing willingness that [harm] occur[.]" *Id.* at 836. These criteria are used because officials in such situations usually act without the benefit of thoughtful reflection. *Id.* at 835. Nevertheless, prison officials may not use excessive physical force against prisoners. *See id.* at 832; *see also Hudson*, 503 U.S. at 9.

Applying these standards, the court is unable to grant Mumford's motion for summary

judgment. Although Foster has clarified his factual allegations concerning the incident in the courtroom and the assault in the elevator, his assertions directly conflict with Mumford's account. Foster denies any showing of anger or disrespect in response to the decision rendered in Family Court such as to necessitate being lifted from his chair, handcuffed, and then being punched in the elevator. Foster also maintains that he felt compelled to report a basketball injury to the prison nurse for fear of retaliation and harassment from Mumford. In addition, Foster's allegations contain factual inconsistencies that require further resolution. Foster alleges that Mumford and Rygiel lifted him from his chair and handcuffed him after he failed to rise promptly after the bailiff's request. Yet he asserted in his grievance to S.C.I. that his hands were already handcuffed at the time of the bailiff's request, causing the delay in putting away his papers and the subsequent delay in rising. As a result, it remains unclear what amount of force Mumford and Rygiel used in lifting Foster up from the chair in the courtroom. It is also not clear whether Mumford punched or used any other type of force on Foster in the elevator since Mumford denies this fact. Therefore, the court cannot enter judgment as a matter of law in Mumford's favor at this time. See, e.g., *Pacitti*, 193 F.3d at 775 (reversing an entry of summary judgment for defendant because, when the record was viewed in the light most favorable to plaintiff, a reasonable jury could find in plaintiff's favor).

The court also is cognizant of the Third Circuit Court of Appeals decision in *Brooks v. Kyler*, 204 F.3d 102 (3rd Cir. 2000). In *Brooks v. Kyler*, a case which is factually similar to Foster's,¹ the court addressed the issue of "whether a prisoner who testifies that he was violently beaten by three prison guards, but who adduces no objective evidence of anything but *de minimis* injuries, may

¹In *Brooks*, the plaintiff alleges that he was assaulted by correctional officers for failing to respond to the officers' order to hang up a telephone. 204 F.3d at 103. Also like Foster, he adduced virtually no evidence to corroborate his allegations.

survive a summary judgment motion on his Eighth Amendment claim.” *Id.* at 102. In reversing the district court’s grant of summary judgment to the defendants, the court stated that “there is no fixed minimum quantum of injury that a prisoner must prove that he suffered through objective or independent evidence in order to state a claim for wanton and excessive force.” *Id.*

Although Foster was given sufficient notice of and responded to Mumford’s motion for summary judgment, albeit inadequately, the factual basis for his excessive force claim remains unclear. In addition, no discovery has been conducted in this matter to date. This lack of clarity prevents the court from ruling on Foster’s claims as a matter of law. Inasmuch as Foster has failed to provide any evidence to contradict Mumford’s affidavit and supplemental materials, genuine issues of material fact still remain that necessitate a trial. Therefore, the court will deny Mumford’s request for a judgment as a matter of law.

V. CONCLUSION

There are discrepancies in the factual allegations asserted with regard to the events that transpired on October 13, 1999 and Mumford has denied using any force while transporting Foster in the elevator. Because there are genuine issues of material fact surrounding the alleged assaults, the court cannot enter judgment as a matter of law in Mumford’s favor. For these reasons, Mumford’s motion for summary judgment will be denied. The court will issue an order to this effect in conjunction with this opinion.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MAJOR S. FOSTER, JR.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 99-871-GMS
)	
CORPORAL J.F. MUMFORD,)	
CORPORAL RYGIEL,)	
)	
Defendants.)	

Major S. Foster, Jr., *pro se*, Georgetown, Delaware.

Plaintiff.

M. Jane Brady, Attorney General of the State of Delaware; Erika Sokoloff, Esquire of the State of Delaware Department of Justice, Wilmington, Delaware.

Attorneys for Defendants.

MEMORANDUM OPINION

March 13, 2001

Wilmington, Delaware.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MAJOR S. FOSTER, JR.,)
)
 Plaintiff,)
)
 v.)
)
CORPORAL J.F. MUMFORD,)
CORPORAL RYGIEL,)
)
 Defendants.)

Civil Action No. 99-871-GMS

ORDER

For the reasons stated in the court’s memorandum opinion of this date, IT IS HEREBY ORDERED that:

1. The defendants Motion for Summary Judgment (D.I. 10) is DENIED.

Dated: March 13, 2001

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE