Curran v. Aleshire
--- F.Supp.3d ---- 2014 WL 7185403 (E.D. La. 2014)

ORDER AND REASONS
JAY C. ZAINEY, District Judge.

Background

This suit arises out of incidents taking place at Fontainebleau High School ("Fontainebleau") on September 24, 2008. Plaintiff April Curran ("April"), then a fifteen year-old student at Fontainebleau, attempted to use her cell phone after her morning classes while on school grounds to get a ride to the New Orleans Center for the Creative Arts after missing her bus. This violated Fontainebleau's rule regarding cell phones on campus. A teacher, observing this behavior and seeking to enforce the rule, approached April to determine her name and to confiscate her cellphone. After April refused to comply, the teacher requested Officer Aleshire's help in enforcing the rule.

At this point, there is a conflict among the parties in the recounting of events. April reports that Aleshire yanked her student ID hanging around her neck, grabbed her, and slammed her against the auditorium wall. (Rec. Doc. 1, 10–11). He then forced her arms behind her back and handcuffed her. Id. at 11. However, while April denies striking Aleshire during this first incident (Rec. Doc. 44–5 at 3), the state court adjudicated her delinquent for battery of a police officer. See, e.g., (Rec. Doc. 44–5, at 5). Thus, it is a judicially established fact that April committed a battery of Aleshire during this first incident. This battery occurred prior to April being thrown against the auditorium wall. (Rec. Doc. 48, at 10; Rec. Doc. 44–6, 10–13).

Aleshire then led April to Assistant Principal Kevin Darouse's office, room 402. During this walk, Aleshire at one point shoved April against a bank of lockers, at which point her cell phone fell out of her shirt. (Rec. Doc. 484).

The school contacted Colleen Curran ("Colleen"), April's mother, to come get her. While waiting, April complained of pain caused by the handcuffs. Kevin Darouse instructed Aleshire to remove the handcuffs, which he did. (Rec. Doc. 48–6, 16).

Colleen, upon her arrival, requested medical attention for her daughter, but the school declined to provide any. (Rec. Doc. 48–6, 18). April and Colleen left the school and proceeded to a nearby hospital where April was treated for "forearm abrasions from the handcuffs, and a head contusion."Id. at 19. Aleshire arrived shortly thereafter at the hospital, informed her that she was being charged with battery of an officer, and then departed. (Rec. Doc. 48–6, 1).

April brought the following claims under federal and state law (where applicable): against Phillip Aleshire for battery, assault, false arrest, false imprisonment, negligent and/or intentional infliction of emotional distress, malicious prosecution, unlawful search and seizure, cruel treatment, and failing to provide medical attention; against St. Tammany Parish Sheriff's Office5 for negligent hiring, retention, training, and supervision of Aleshire, and an official policy or custom of ignoring complaints against its employees and of performing no investigation or

grossly defective investigation of such complaints; against Sheriff Strain, individually and in his official capacity, under vicarious liability for the acts of Aleshire, negligent hiring, retention, training, and supervision of Aleshire, and deliberate indifference to all of these acts concerning Aleshire; against the St. Tammany Parish School Board ("STPSB") for negligent hiring, retention, training, and supervision of Aleshire, Vitrano, and its other employees, an official policy or custom of ignoring complaints against its employees and of performing no investigation or grossly defective investigations of such complaints, and its official policy or custom of prohibiting the mere possession of cell phones by students; against Gayle Sloan, individually and in her official capacity as Superintendent of the St. Tammany Parish School Board, under vicarious liability for the acts of Aleshire, the negligent hiring, retention, training and supervision of Aleshire, Vitrano, and other school personnel, and deliberate indifference to all of those acts concerning Aleshire; and the same claims against Johnny Vitrano, individually and in his official capacity as Principal of Fontainebleau High School.

Both April Curran as well as Colleen Curran seek a variety of damages, including those related to physical needs, emotional suffering, consortium and related claims, and punitive damages.

As several of these claims overlap, the Court will address the motions by nature of the claim. The Court will specify where appropriate which motion, claim, and defendant it is addressing and the corresponding specific rulings. It will conclude with a summary of these rulings.

Discussion

Claims against Aleshire

Defendant Aleshire moves for summary judgment as to Plaintiff's claims of battery, assault, unlawful search and seizure, cruel treatment, malicious prosecution, false arrest, and false imprisonment. Aleshire first raises the argument that the claims under federal law (via § 1983) are barred by the Heck doctrine.

The Heck doctrine bars the Court from entertaining a suit for damages under § 1983 where such claims would necessarily undermine the validity of the state court criminal conviction. See Buckenberger v. Reed, 342 Fed.Appx. 58, 61 (5th Cir.2009) (citing Heck v. Humphrey, 512 U.S. 477, 486–87, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994)). Thus, Aleshire asserts that allowing these claims to go forward would undermine the validity of April's adjudication for battery of an officer. The Court will address the claims individually, noting the effect of its findings on the claim both under federal law, and, where applicable, state law.

Unlawful Search and Seizure

[1] The Court addresses the unlawful search and seizure claim as a separate claim intended to attack the arrest of April Curran for battery of a police officer.

It is true that "a claim of unlawful arrest, standing alone, does not necessarily implicate the validity of a criminal prosecution following the arrest." Mackey v. Dickson, 47 F.3d 744, 746 (5th Cir.1995)(emphasis in original) (citations omitted). However, even if April had been able to point to a genuine issue of a disputed material fact in this case, her only arguments regarding the circumstances of

her arrest that could give rise to a claim of unlawful search and seizure are insinuations that the battery never took place (e.g., references in the Opposition to the "alleged battery" or "supposedly [Plaintiff] April [Curran] having knocked [Defendant Officer] Aleshire's glasses and radio off"). (Rec. Doc. 48, at 10, 16.) Thus, a claim of unlawful arrest in this context would necessarily implicate the validity of the criminal conviction and would therefore be barred by Heck.

Therefore, the motion for summary judgment as to April's independent unlawful search and seizure claim against Defendant Aleshire (Rec. Doc. 44) is GRANTED.

Excessive Force, Battery, Assault, Cruel Treatment, and Unlawful Search and Seizure

Defendant Aleshire also moves for summary judgment as to April's excessive force claims under 42 U.S.C. § 1983. Although April does not mention such a claim by name in her Complaint, she does list claims of "battery," "assault," "cruel treatment," and "unlawful search and seizure." (Rec. Doc. 1, at 7–8). In her Opposition to the motion for summary judgment however, Plaintiff clarifies her claim as one of "excessive force." E.g., (Rec. Doc. 48, at 1) ("This case arises out of Philip Aleshire's use of excessive force against April Curran on September 24, 2008.").

Aleshire raises three arguments in his motion for summary judgment as to the excessive force claim. First, he argues that any such claims should be barred by the Heck doctrine. Second, he argues that even if the Heck doctrine does not apply, any injuries arising from the incident are de minimis and thus do not implicate the Fourth Amendment. Third, Aleshire argues that, regardless of the previous arguments, he is entitled to qualified immunity because his actions were objectively reasonable.

Plaintiff responds to the Heck argument by claiming that the action giving rise to the conviction for battery of an officer and the action giving rise to the excessive force claim are conceptually distinct and therefore can "coexist." Plaintiff also argues that the sufficiency of the injury for Fourth Amendment purposes is not only contextual but can also be purely psychological. Plaintiff thus argues that the injury here crosses the de minimis threshold of the Fourth Amendment and points to treatment for psychological issues arising from the incident. Finally, Plaintiff argues that Officer Aleshire's actions were clearly unreasonable, as Plaintiff was not resisting or fleeing from arrest, and therefore Defendant is not entitled to qualified immunity.

Addressing the first argument, the Court finds it helpful to revisit the sequence of factual events. As judicially established, April battered Aleshire outside the school auditorium. In response, Aleshire spun Plaintiff against the wall and placed handcuffs on her. Then, while escorting Plaintiff to room 402, Aleshire at one point allegedly spun and pushed Plaintiff against the wall in a hallway.

In support of his argument that Heck should bar the excessive force claims, Aleshire relies on an overly broad application of the holding in Hudson in arguing that a claim of excessive force is barred any time one is subsequently convicted for battery of an officer. However, the facts of Hudson make clear the proper scope of the operation of Heck in such a case. The facts giving rise to the conviction in Hudson took place in a simultaneous struggle between the officer and the perpetrator during the arrest. Hudson v. Hughes, 98 F.3d 868, 873 (5th Cir.1996). The court explained its holding as follows: "[Heck applies] because the question whether the police applied reasonable

force in arresting him depends in part on the degree of his resistance, which in turn will place in issue whether his resistance (the basis of his conviction for assaulting a police officer) was justified...."Id.(emphasis added).

Contrast this to the sequence of events in the case before the Court, in which the action giving rise to the conviction was a swing at the officer which was followed by the events giving rise to the claims of excessive force.7 Considering this timing, the Court finds that there exists a disputed issue of material fact as to whether the events were conceptually distinct, and whether a successful excessive force claim "would necessarily imply the invalidity of [her] conviction." Hudson, 98 F.3d at 872; see, e.g., Bush v. Strain, 513 F.3d 492, 498 (5th Cir.2008) (explaining that a claim "would not be barred by Heck, if the factual basis for the conviction is temporally and conceptually distinct from the excessive force claim").

For example, in Ballard v. Burton, the Fifth Circuit considered the application of Heck to an excessive force claim where the plaintiff had been previously convicted in state court of simple assault on a law enforcement officer. 444 F.3d 391, 393–94 (5th Cir.2006). The Fifth Circuit noted the distinction to be "[i]f it is possible for [Plaintiff] Ballard to have assaulted Boling and for Burton's shooting of Ballard to have been objectively unreasonable, then Heck does not bar Ballard's claim." Id. at 398. Because the satisfaction of the elements of a simple assault occurred distinct from the alleged use of unreasonable force, the Fifth Circuit found that the facts did not implicate Heck. Id. at 400; see, e.g., Pratt v. Giroir, no. 07–1529, 2008 WL 975052, at *6 (E.D.La. April 8, 2008) ("Since the Court cannot rule out the possibility that excessive force was used after Pratt's battery on the officers had been completed and when she was no longer resisting them, Defendants' motion to dismiss is denied."); Bramlett v. Buell, no. Civ.A.04–518, 2004 WL 2988486, at *4 (E.D.La. Dec. 9, 2004) ("Because the battery upon [Officer] Major was completed before the officers shot Bramlett to protect the bystanders, a finding in this case that the officers stepped over the line in shooting Bramlett would do nothing to undermine the conviction for aggravated battery."); Howard v. Del Castillo, no. Civ.A.00–3466, 2001 WL 1090797, at *4 (E.D.La. Sept. 17, 2001) (denying a motion for summary judgment because "[a] section 1983 claim that the police used excessive force after Howard's arrest does not necessarily imply the invalidity of Howard's battery conviction because this beating may have occurred after the battery [on the officers] was over.") (emphasis in original).

This case is no different. Two incidents giving rise to the claims of excessive force allegedly occurred after the completion of the battery of Aleshire.

Aleshire finally attempts to invoke Heck by claiming that Plaintiff argues against her conviction itself and therefore concedes all parts of the interaction were part of a cohesive whole. (Rec. Doc. 60, at 7). The Fifth Circuit applied this rationale in DeLeon v. City of Corpus Christi to find a claim barred under Heck. 488 F.3d 649 (5th Cir.2007). Accepting the plaintiff's version of events in that case, a struggle broke out between the plaintiff and the police officer after the officer pepper-sprayed the plaintiff. Id. at 651. After apparently regaining control of the situation, the officer shot the plaintiff several times. Id. Nonetheless, the Fifth Circuit found that Heck applied to bar the excessive force claim. Critical to the court's decision was a finding that the plaintiff did "not allege that his claims of excessive force are separable from his aggravated assault on the officer," and "[t]here is no alternative pleading or theory of recovery that would allow this claim for excessive force to proceed without interfering with the Texas proceeding...."Id. at 656. As the claims directly challenged the underlying "conviction," the court found that Heck applied. Id. at 657; see, e.g., Arnold v. Slaughter, 100 Fed.Appx. 321 (5th Cir.2004) (similar claims and finding); Daigre v. City of Waveland, 549 Fed.Appx. 283 (5th Cir.2013) (same).

At the very least, April provides an alternative argument that the incidents constituting the excessive force claim took place after the battery. For instance, counsel for Plaintiff states, "There is no evidence ... that April was attempting to flee, evade arrest by flight, or resist arrest. Nor was she ever charged with any crime other than battery of a police officer, an event that was over at the time of Aleshire's use of force made subject of this suit."(Rec. Doc. 48, at 17). By arguing

that the events are conceptually distinct, April provides a theory of that alternative pleading which the Fifth Circuit found lacking in DeLeon and upon which this Court finds a disputed issue of material fact.

Thus, the Court finds Heck inapplicable to the excessive force claims of April and turns to Aleshire's next arguments—that the injury at issue here is insufficient to invoke protections of the Fourth Amendment and, asserting the defense of qualified immunity, that Aleshire's use of force was not objectively unreasonable.

The defense of qualified immunity shields government officials performing discretionary functions from liability for civil damages if "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). The qualified immunity defense does not apply if the defendant violates the plaintiff's constitutional right, and the plaintiff's constitutional right clearly was established at the time of the violation. Manis v. Lawson, 585 F.3d 839, 843 (5th Cir.2009). However, even if the defendant violates a clearly established constitutional right, the defendant is entitled to qualified immunity if the defendant's actions were objectively reasonable as measured by the law existing when the conduct occurred. Collins v. Ainsworth, 382 F.3d 529, 537 (5th Cir.2004). Once a defendant raises a qualified immunity defense in a motion for summary judgment, the burden then shifts to the plaintiff to rebut the defense by establishing that a genuine issue of material fact exists as to whether the official's allegedly wrongful conduct violated established law (although inferences are still drawn in favor of the plaintiff).Tolan v. Cotton, —— U.S. ——, 134 S.Ct. 1861, 1865–66, 188 L.Ed.2d 895 (2014); Michalik v. Hermann, 422 F.3d 252, 262 (5th Cir.2005).

Turning to the alleged constitutional right at issue, the Fourth Amendment grants individuals the right to be free from unreasonable search and seizure, including the right to be free from the use of excessive force by law enforcement. Ikerd v. Blair, 101 F.3d 430, 433–34 (5th Cir.1996). In order to state a claim for excessive force in violation of the Constitution, the plaintiff must prove "(1) an injury, which (2) resulted directly and solely from the use of force that was clearly excessive to the need and the excessiveness of which was (3) objectively unreasonable." Id. The injury need not be "significant," but it must be more than de minimis. Tarver v. City of Edna, 410 F.3d 745, 752 (5th Cir.2005) (citations omitted). If a defendant's use of force was reasonable under the circumstances, then there is no violation of the Fourth Amendment. Estate of Shaw v. Sierra, 366 Fed.Appx. 522, 523 (5th Cir.2010). In evaluating whether the force used by officers is excessive, a court must balance the facts and circumstances of each case, "including 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." Graham v. Connor, 490 U.S. 386, 396, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989).

First, the Court considers Aleshire's argument that April's injury was de minimis.Plaintiff alleges that she suffered a head contusion, forearm abrasions, and psychological injuries as a result of the force used against her by Aleshire in the two incidents. (Rec. Doc. 48–6, at 3; Rec. Doc. 44–5, at 4). She contends that these injuries manifested as headaches, bruises, her arm in a splint for three days, and psychological injuries. (Rec. Doc. 48–6, at 3). It is undisputed that April went to the hospital following her encounters with Aleshire. Plaintiff has also provided records from her psychiatrist which attest to "associated depressive symptoms and symptoms of social anxiety disorder" that the psychiatrist notes as developing following the incidents with Aleshire. (Rec. Doc. 48–7, at 2).

The extent of the alleged injuries and their visible manifestation, supported by depositions and medical records, contrasts with cases in which the injuries consisted only of those from "too tightly handcuffing," psychological injuries with no substantiation, or injuries with no visible manifestation or other causal evidence. E.g., Tarver, 410 F.3d at 752 (finding handcuffing injuries and unsupported claims of psychological injuries to be de minimis); Freeman v. Gore, 483 F.3d 404, 417 (5th Cir.2007) (finding an injury limited to "bruising on her wrists and arms because the handcuffs were applied too tightly when she was arrested" to be de minimis after denying the defendants' motion for summary judgment on the related wrongful arrest claim); Clark v. Watson, no. 12–1976, 2013 WL 3984218, at *3–4 (E.D.La. July 31, 2013) (finding a lack of injury where there were "no visible signs of the injury" and the only complaints related to preexisting conditions).

Although the Court finds this a close call, it finds sufficient evidence in the record to create an issue of fact as to an injury that is more than de minimis.

The third element, whether the use of force was objectively unreasonable, requires more insight into the particular context, which in turn sheds more light on the Court's determination on the issue of sufficient injury. Williams v. Bramer, 180 F.3d 699, 704 (5th Cir.1999) ("What constitutes an injury in an excessive force claim is therefore subjective—it is defined entirely by the context in which the injury arises."). In this case, the question of whether the conduct was objectively unreasonable cannot be resolved without being presented to the trier of fact.

The allegations are that after April struck Aleshire, Aleshire spun and slammed her head against the wall and forced her arms behind her back to put on handcuffs—events during which April did not resist. The affidavits of both April and an eyewitness, Clenia Dimanche, support this sequence of events. 9 (Rec. Doc. 48–6; Rec. Doc. 48–5). While walking April to the principal's office, Aleshire also "slammed" her against a locker or hallway wall at one point as well, contributing to the bruising and psychological injuries—the occurrence of which statements from both parties (although differing as to how much force was used) and video evidence suggest. (Rec. Doc. 44–6; Rec. Doc. 48–6; Rec. Doc. 48–4).

Looking to the first of the Graham factors, the severity of the crime, the Court finds battery of an officer to be a serious offense. However, the second and third factors from Graham, the threat posed and the degree of resistance or flight, must be considered. Drawing inferences in the light most favorable to the non-movant, April posed a minimal threat to Aleshire or to others. Her single strike made contact with Aleshire, but Aleshire reports no pain, injury, or further threat that he experienced. (Rec. Doc. 44–6). Aleshire even goes on to note that his concern in using force against April was out of concern for others, not himself. Id. This perceived threat to others remains unclear. Aleshire and a witness, Leonard Abram, both claim that April continued to "thrash around" and thus was threatening others. (Rec. Doc. 44–4; Rec. Doc. 44–6). The affidavit of witness Clenia Dimanche directly contradicts this, stating that April did not resist at all. (Rec. Doc. 48–5). This also goes to the third factor, the degree of resistance or attempt at escape. Whether April's action against Aleshire was limited to the one strike or if it included resistance is a core dispute between the parties. If the defendants' version of the facts was undisputed, the Court would have little trouble in finding the initial use of force by Aleshire, drawing all other inferences in favor of the Plaintiff, to be a reasonable use of force. See, e.g., Bush, 513 F.3d at 502 (focusing on the degree of resistance as a critically-disputed fact in determining whether throwing plaintiff against the car was unreasonable); Deville v. Marcantel, 567 F.3d 156, 167 (5th Cir.2009) (same as to whether a rough extraction from a car to effect an arrest was excessive). April points to the deposition of an eye witness which supports her claim that she did not resist, which would imply a lack of threat to others. Finally, the "slamming" of April into the lockers while walking to room 402 presents the issue of whether she was trying to escape or otherwise resist, as is claimed by Aleshire, or if it

was an arbitrary use of force, as is claimed by April. Both point to video and still picture evidence to support their respective positions, but that evidence is inconclusive and better left to the trier of fact.

Turning to the question of whether this incident constituted a violation of a clearly established right at the time, it is a clearly established right that an individual has the right to be free from the use of excessive force during a detainment. More specifically, the law was clearly established, and thus Aleshire should have known, that when one is not resisting arrest, attempting to escape, or otherwise posing a threat at the time of the alleged use of force, "slamming" one into walls and thereby causing injuries constitutes an excessive use of force. See, e.g., Bush, 513 F.3d at 502 (finding the plaintiff's version of events that "she was not resisting arrest or attempting to flee when [the officer] forcefully slammed her face into a nearby vehicle during her arrest" to indicate a violation of a clearly established right). April has presented evidence to support that she was not resisting, threatening others, or attempting to escape at both times Aleshire applied force. Aleshire also gave no indication that he felt threatened. Inferring these factual disputes in favor of April, summary judgment on the issue of qualified immunity is denied. Goodson v. City of Corpus Christi, 202 F.3d 730, 739 (5th Cir.2000) (denying qualified immunity on summary judgment "because 'a genuine dispute as to the material and operative facts of this case exists, ... [s]ummary judgment is inappropriate unless plaintiff's version of the violations does not implicate clearly established law' ") (quoting Johnston v. City of Houston, 14 F.3d 1056 (5th Cir.1994)). Defendants' version of events—that April was thrashing around during the initial detainment and only a minimal amount of force was used while April was trying to free herself in the second incident—present scenarios in which Aleshire's use of force would likely be objectively reasonable. While such a determination might be made, and thus Officer Aleshire would be entitled to qualified immunity, the determination on these factual issues is a matter for the trier of fact.

For the same reasons that summary judgment is denied as to the excessive force claims under 42 U.S.C. § 1983, it is also denied as to the parallel state law claims (excessive force / battery and assault). Deville, 567 F.3d at 173 (finding "Louisiana's excessive force tort mirrors its federal constitutional counterpart"). Thus, the motion for summary judgment filed by Aleshire (Rec. Doc. 44) as to the federal and state law claims for excessive force, assault, and battery, including the defense of qualified immunity, is DENIED.

Comment

In Curran v. Aleshire, the U.S. District Court in Louisiana ruled that the SRO used excessive force in violation of the 4th Amendment. As to the use of force by the SRO while escorting the student to the principal's office, the court notes that "there is no evidence . . . that [the student] was attempting to flee, evade arrest by flight, or resist arrest." The court went on to note the following:

"While walking [the student] to the principal's office, [the SRO] also "slammed" her against a locker or hallway wall at one point as well, contributing to the bruising and psychological injuries. … the Court finds [the student] posed a minimal threat to [the SRO] or to others. … [I]t is a clearly established right that an individual has the right to be free from the use of excessive force during a detainment. … and thus [the SRO] should have known, that when one is not resisting arrest, attempting to escape, or otherwise posing a threat at the time of the alleged use of force, "slamming" one into walls and thereby causing injuries constitutes an excessive use of force."