

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

JACOB THOMAS EARLS,
ADC #114556

PLAINTIFF

v.

No. 3:09-cv-00230-JLH-JJV

MATTHEW RING, Paragould
Police Department

DEFENDANT

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended partial disposition has been sent to United States District Chief Judge J. Leon Holmes. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in a waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a new hearing for this purpose before either the District Judge or Magistrate Judge, you must, at the time you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence to be proffered at the new hearing (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The details of any testimony desired to be introduced at the new hearing in the form

of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the new hearing.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing. Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

I. INTRODUCTION

Before the Court is Defendant Matthew Ring’s Motion for Summary Judgment (Doc. No. 37). Plaintiff, Jacob Thomas Earls, an inmate at the Delta Regional Unit of the Arkansas Department of Correction, initiated this lawsuit pursuant to 42 U.S.C. § 1983, and alleges that Officer Ring of the Paragould Police Department used excessive force when arresting him on August 11, 2009.

II. HEARING

On August 16, 2010, the Court held an evidentiary hearing and took sworn testimony from the parties and their respective witnesses. The hearing centered on two book-in photographs received into evidence.¹ Exhibit 1 is an undated jail document entitled “Inmate Information Sheet,”

¹Both were admitted as Defendant’s exhibits (Hr’g Tr. 44), but Exhibit 1 came from Plaintiff. With regard to how Mr. Earls came to possess this document, he testified as follows:

I found it in my -- the day I was leaving to go to Brickeys, Arkansas, to start my six-month PD, I found it in the trash bag in my clothes and it was in my personal property. They have plastic Ziplock bags that they seal when they -- like your wallet, your watch. The picture was in there, folded in half. I took it and I slipped it in my pocket because I knew it was crucial. It was crucial evidence. I knew that.

which contains a photograph showing Earls beaten and unconscious. (Def.’s Ex. 1.) Exhibit 2 is another jail document entitled “Booking Sheet,” which contains a photograph showing Earls without a scratch and wearing a very colorful, button down, dress shirt. (Def.’s Ex. 2.) Exhibit 2 also showed a “Book In” date of August 11, 2009.

A. Plaintiff’s Evidence

Mr. Earls testified that in the early morning hours of August 11, 2009, Ring arrested him and, during the course of the arrest, slammed him against the police vehicle and then the ground, rendering him unconscious. (Hr’g Tr. 13.) Earls testified, “That’s the last I remember.” *Id.* Earls stated he believes the photograph in Exhibit 1 was taken after Ring arrested him and booked him into the Green County Detention Center on August 11, 2009.

William Shaw, a detainee at the Green County Detention Center on August 11, 2009, testified that he remembered when Mr. Earls arrived at the Detention Center that night and Earls “was totally out.” *Id.* at 49. Shaw stated, “When they took his picture they took his head like this and held it back, and they’re laughing and stuff because he was out.” *Id.* Shaw testified that the Exhibit 1 photograph accurately depicted Earls’ condition on August 11, 2009, at the Green County Detention Center. *Id.*

B. Defendant’s Evidence

Officer Ring testified that he had, in fact, used force to arrest Earls because he was trying to flee. (Hr’g Tr. 88.) Ring stated he took Earls to the ground using a “arm-bar take down” and handcuffed him. *Id.* at 89. He further stated, “Once I set him in the seat, I got my flashlight out of my pocket and looked at his face. . . . There were like two small scratches but they were so minor they didn’t even draw blood. There was no blood dropping so he appeared fine.” *Id.*

Id. at 176.

Ring then told the Court about his interactions with Earls after the arrest. He testified as follows:

We sat out in the patrol car taking a jaw. I don't really remember. We talked, but I don't remember what we talked about. I do recall once we got to the jail, Jailer Cody Oost was there behind the booking desk. Soon as we come in the door Cody Oost had made a comment about Jacob's shirt being colorful or something and I kind of snickered back and said, yes, it's colorful, but once I set Jacob down at the stool, I took his handcuffs off and stood just to the right of him and probably two feet from him, filled out my paperwork I had to fill out for the jail. We conversed there. I think he asked me how my parents were doing. I asked him how his grandmother was doing, and that was pretty much the end of that.

Hr'g Tr. at 93.

Later Officer Ring told the Court the following:

I recall [Earls] wearing a dark-colored button-up shirt. . . . Because once we got to the jail and I got him out of the car, he walked in on his own and sat down. . . . I recall briefly some of our conversations because he asked me about my parents; I asked about his grandmother, and I believe on my way out I wished him good luck, and that's the last I saw him.

Id. at 100-101.

Throughout the hearing, Officer Ring asserted that Mr. Earls looked as pictured in Exhibit 2 after his arrest. When shown Exhibit 1, he steadfastly denied this photograph was taken after the August 11, 2009, arrest. *Id.* at 99.

Officer Marcoe testified she arrived on the scene a few minutes after Earls' arrest. (Hr'g Tr. 112.) When asked if she took a "good look" at Mr. Earls, she stated, "I mean, I looked [at] him about as much as I would at any other person that's under arrest, didn't - - there was really nothing out of the ordinary from a normal day so I didn't really take a particular look at him." *Id.* She further testified that had Mr. Earls looked as pictured in Exhibit 1, "I probably would have been like, Hey, does he need an ambulance or something. I mean, from that it appears that he would have somewhat serious injuries." *Id.* at 115.

Lieutenant Baldridge served as Ring's supervisor on August 11, 2009. *Id.* at 121. He arrived at the scene after Ring had arrested Mr. Earls. *Id.* at 123-124. Lieutenant Baldridge described the scene as a "non-event." (Hr'g Tr. 124.) When asked if the Exhibit 1 photograph depicted Earls' condition that night, Lieutenant Baldridge answered, "Absolutely not." *Id.* at 126. When asked how he could be so sure, Baldridge testified, "Because I would have noted any injuries like that and, then, that would not have been a non-event for me." *Id.*

Defense witness, Officer Cody Oost, testified that he served as a jailer at the Greene County Detention Center in August 2009. The Court asked Oost if he was present when the photograph in Exhibit 1 was taken and Oost stated, "I'm believing I was because - - I mean, I'm not saying I took the picture." *Id.* at 157. When defense counsel asked if the photograph was taken after Earls' arrest, Oost testified that:

I couldn't testify when that picture was taken. I have no - - I just remember that picture. I don't remember if I was even there when that picture was taken. I just remember everybody looking at that picture because, you know - - Just because of the picture. I mean it's not every day we have a, you know, an inmate come in looking like that, you know, just acting how he was, you know, just all, you know - - I don't even remember; I couldn't tell you why he came in looking that - - "

Id. at 162-163.

C. Post-Hearing Evidence

After hearing from the parties, the Court concluded the record was incomplete because serious questions remained about Exhibits 1 and 2, and ultimately Jacob Earls' condition after the August 11, 2009, arrest. Therefore, the Court entered an order directing defense counsel to provide a detailed accounting of all photographs taken of Mr. Earls by the Green County Sheriff's Department, Green County Detention Center, and Paragould Police Department. (Doc. No. 65.)

In response, defense counsel provided an Affidavit from Brian Agee, Software Developer

at Tiger Correctional Services, the software company used at the Green County Detention Center. (Doc. No. 73.) Agee gave a detailed accounting of all photographs of Earls from the Green County Detention Center. He stated the Exhibit 2 photograph – that Officer Ring and his law enforcement witnesses asserted was the book-in photo from the August 11, 2009 arrest² – was actually taken May 18, 2009. (Agee Aff. p. 2 of 3; Doc. No. 73.) Agee further stated the Exhibit 1 photograph – showing Earls beaten and unconscious – comes from a document “created on August 11, 2009, at 2:12:46 at the Green County Detention Center.” *Id.*

III. ANALYSIS

In his Motion for Summary Judgment (Doc. No. 37), Ring submits essentially the same evidence presented at the August 16, 2010, evidentiary hearing. (Doc. No. 38.) He argues that during the arrest on August 11, 2009, Mr. Earls only received minor scratches and that he (Ring) did not use excessive force. Ring proposes Exhibit 2 as evidence that Jacob Earls had no notable injuries when he was booked into the Green County Detention Center. In support of his Motion, Officer Ring offers his sworn Affidavit wherein he states, “Mr. Earls did receive a few minor scratches on face (*sic*) from going to the ground. He did not appear to need any medical attention for the scratches.” (Doc. No. 38, p. 11). Officer Ring offers as further support of his Motion the incident report he wrote several months later, on January 30, 2010. *Id.* at p. 15. In this report, Officer Ring provides the same information found in his Affidavit.

While Ring vigorously defends his position that he did not use excessive force when he arrested Mr. Earls, the Exhibit 1 photograph calls into serious question the veracity of Ring’s

²Jailer Cody Oost testified he distinctly remembered this photograph from the August 11, 2009 arrest because he and Defendant Ring made fun of the shirt (Hr’g Tr. 148-149). Officer Ring testified, “Soon as we come in the door Cody Oost had made a comment about Jacob’s shirt being colorful or something and I kind of snickered back and said, yes, it’s colorful. . . .” *Id.* at 93.

defense. Agee has provided incontestible evidence that Jacob Earls did not appear as depicted in the photograph from Exhibit 2. This photograph was taken nearly three months earlier, on May 18, 2009. (Doc. 73-1, p. 3 of 3.) Therefore, Officer Ring's reliance on Exhibit 2 as evidence of Earls' post-arrest condition is wholly rejected by the Court.

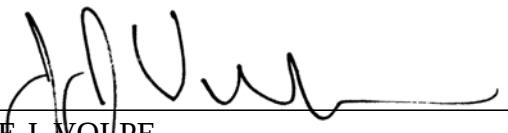
Agee was unable to provide a date stamped copy of the photograph of Exhibit 1 because it is no longer in the system.³ Mr. Agee was only able to verify that the document marked as Exhibit 1 was created on August 11, 2009, at 2:12 a.m. Despite the lack of date stamp on the photograph, the Court finds Exhibit 1 highly persuasive evidence in support of Jacob Earls' allegation of excessive force.

Accordingly, questions of material fact remain as to whether Officer Ring used excessive force when he arrested Jacob Earls on August 11, 2009. Therefore, the Court concludes that Defendant's Motion for Summary Judgment should be denied.

IT IS, THEREFORE, RECOMMENDED that:

1. Defendant's Motion For Summary Judgment should be DENIED. (Doc. No. 37)

DATED this 27th day of October, 2010.



JOE J. VOLPE
UNITED STATES MAGISTRATE JUDGE

³The fact that the date-stamped photograph from August 11, 2009, is missing from the system at the Green County Detention Center, while older photographs taken on March 31, 2006, April 13, 2009, and May 18, 2009 still remain, suggests spoliation of evidence.