**NONPRECEDENTIAL DISPOSITION**
To be cited only in accordance with FED. R. APP. P. 32.1

# United States Court of Appeals

**For the Seventh Circuit**
**Chicago, Illinois 60604**

Submitted July 1, 2024*
Decided July 2, 2024

***Before***

DIANE S. SYKES, *Chief Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 23-2848

MICHAEL D. PASSMORE,
*Plaintiff-Appellant*,

*v*.

KLAYTON NAUMAN,
*Defendant-Appellee*.

Appeal from the United States District Court for the Southern District of Indiana, Terre Haute Division.

No. 2:20-cv-00584-JPH-MJD

James Patrick Hanlon,
*Judge*.

**O R D E R**

Michael Passmore, an Indiana prisoner, appeals the summary judgment on his claim that a guard forced him and other prisoners to remain outside while the prison's medical dorm was sanitized in response to COVID-19. Passmore asserted that the

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

guard's conduct, which led to a severe sunburn after several hours outdoors, reflected deliberate indifference to a substantial risk of serious harm to Passmore and a violation of his Eighth Amendment rights. *See* 42 U.S.C. § 1983. But because Passmore did not meet his burden to overcome the guard's qualified-immunity defense, we affirm.

We recite the facts by resolving all material disputes and drawing all reasonable inferences in favor of Passmore, the nonmovant. *See Stewart v. Wexford Health Sources, Inc.*, 14 F.4th 757, 760 (7th Cir. 2021). On August 7, 2020, guards at Putnamville Correctional Facility in Greencastle, Indiana, where Passmore is incarcerated, needed to clear out the prison's medical dorm to allow a "hazmat" team to sanitize the facility to combat the spread of COVID-19. One guard, Klayton Nauman, relocated the dorm's 60 prisoners, including Passmore, to an outdoor recreation area known as the "ballfield." Nauman estimated that the prisoners would be able to return to their dorm in one to two hours. Passmore told Nauman that he was "lily white," "Nordic," and going to burn in the sun. Nauman asked Passmore, "sarcastic[ally]," whether he had a "sun pass," presumably meaning a doctor's orders to stay out of the sun—something Putnamville's doctors do not give out. When Passmore replied, "no," Nauman laughed and told him that the time outdoors would be good for him.

Passmore says that the hazmat team, which Nauman did not control, dawdled. As a result, Nauman's estimate for when prisoners could return to their dorm was off—Passmore was outside without shade for eight hours. He ended up with severe sunburn that blistered and hurt for "weeks." He later developed a dark spot on his right arm diagnosed as "seborrheic keratosis." The record contains no medical evidence on the cause or significance of this condition.

In this suit, Passmore accuses Nauman of violating the Eighth Amendment's prohibition on cruel and unusual punishment. His claim was originally part of a bigger lawsuit against other defendants concerning, among other things, COVID-19 protocols and medications. The district judge severed this claim, *see* FED. R. CIV. P. 20(a)(2), and Nauman moved for summary judgment. He argued that he was not liable because the sun did not pose a substantial risk of serious harm to Passmore, the prison had a penological interest in keeping Passmore outside while the building was sanitized, and Nauman was entitled to qualified immunity because he did not violate a clearly established right. *See generally Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Passmore responded that other buildings could have held the men while the dorm was cleaned, and he cited three cases that, he thought, clearly established that Nauman violated his

Eighth Amendment rights: *Rhodes v. Chapman*, 452 U.S. 337 (1981); *Hope v. Pelzer*, 536 U.S. 730 (2002); and *Helling v. McKinney*, 509 U.S. 25 (1993).

The district judge granted Nauman's motion, reasoning that Passmore had failed to overcome Nauman's qualified-immunity defense because the cases he cited were "meaningfully distinguishable." Further, the judge continued, no Supreme Court or Seventh Circuit cases notified Nauman that leaving Passmore "in the sun for several hours on a relatively mild summer day when necessitated by the need to disinfect the facility for inmate safety" violated Passmore's Eighth Amendment rights.

On appeal, Passmore contests the district judge's conclusion that Nauman was entitled to qualified immunity. First, he maintains that his cited cases met his burden. Second, he argues that the judge resolved factual disputes against Passmore. One such dispute—and Passmore's primary concern—is whether other buildings had capacity to hold the prisoners. He also insists that the judge "barely" acknowledged that the ballfield was unshaded and the sun's ultraviolet light (rather than the "mild" temperature) injured him.

When a defendant raises a qualified-immunity defense, the plaintiff bears the burden of showing that the defendant's conduct violated a clearly established right. *Leiser v. Kloth*, 933 F.3d 696, 701 (7th Cir. 2019). A right is clearly established if, at the time of the alleged conduct, sufficiently analogous caselaw would make it clear to a reasonable official "that what he is doing violates that right." *Taylor v. Barkes*, 575 U.S. 822, 825 (2015) (citation omitted).

The district judge's ruling, which we review de novo, *see Quinn v. Wexford Health Sources, Inc.*, 8 F.4th 557, 565 (7th Cir. 2021), was proper. To begin, none of Passmore's cited cases would put a reasonable officer on notice that directing prisoners to remain outside in the sun while an interior is cleansed of a harmful contaminant would violate the Eighth Amendment. As Passmore concedes in his brief, *Hope v. Pelzer* was the only case "that was even close." But *Hope* involved guards who cuffed a prisoner to a post outside for seven hours, forced him to remove his shirt, deprived him of water and bathroom breaks, and taunted him by giving water to dogs and spilling it in front of him. 536 U.S. at 734–35. The Supreme Court held that the guards' actions were "totally without penological justification." *Id.* at 737, 745 (citation omitted). Further, the cruelty of deliberately and needlessly subjecting a prisoner to dehydration, humiliation, and topless sun exposure would put a reasonable officer on notice that the officer was violating the prisoner's Eighth Amendment rights. *Id.* at 745.

By contrast, even on the facts that Passmore asks us to assume (the availability of other interior space and the heightened ultraviolet radiation on his light skin), for three reasons he must lose against the qualified-immunity defense. First, Nauman had a legitimate penological interest, which Passmore does not dispute, in helping to mitigate the spread of COVID-19 in the medical dorm by clearing the dorm for decontamination. Second, no evidence suggests that Nauman had control over, or knowledge about, all the factors that might harm Passmore. For example, even if interior space was available, Passmore furnished no evidence that Nauman had the authority to move Passmore to it. Likewise, despite his sarcasm, no evidence suggests that Nauman insincerely estimated that Passmore would be outside for only two hours, that Nauman controlled the slow pace of decontamination, or that he knew the ultraviolent radiation level that day or its effect on Passmore's skin. Finally, no evidence indicates that Nauman added needlessly cruel conditions while Passmore was outdoors: He did not deny Passmore water, a toilet, or clothing. On these facts, a reasonable officer assisting in the decontamination of a prison by directing a light-skinned prisoner out into the sun would not know that doing so violates the prisoner's Eighth Amendment rights.

In closing, we note that Passmore's brief suggests that he believes the judge's decision to sever his claim was in error. But he does not develop an argument about this; thus, we have no reason to disturb that ruling.

AFFIRMED