IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS—EASTERN DIVISION

JOSEPH KEELING, Plaintiff, v. SHERIFF OF LAKE COUNTY, IL, and LAKE COUNTY, IL, Defendants.	Case No. 23 CV 3442 Judge Steven C. Seeger Magistrate Judge Young B. Kim

REPLY IN SUPPORT MOTION FOR SUMMARY JUDGMENT

To survive summary judgment, Plaintiff asks the Court to assume that a document produced in discovery was fabricated "as part of a corrupt scheme to avoid liability." (Response, Dkt. #46, at 11). He cites no evidence of fabrication, he merely makes the baseless accusation and instructs the Court that it must reject the document in viewing the evidence in "the light most favorable" to Plaintiff. Certainly, if "viewing in the light most favorable" required courts to deem all evidence detrimental to Plaintiff's case as fabricated, it would do away with summary judgment altogether. But that outrageous and unfounded assertion is not at issue here. Plaintiff cannot show that defendants demonstrated "deliberate indifference" towards him.

Plaintiff must present evidence establishing a genuine issue of material fact on all elements of his claim—he is not entitled to present his claim to a jury based on his "theory," but rather based on evidence. Moreover, Plaintiff does not forward a single legal argument in response to the clear caselaw requiring plaintiff to establish causation for his injury. Summary judgment should issue.

I. Plaintiff Misconstrues the Appropriate Standard for Summary Judgment

Plaintiff's view of summary judgment appears to be that the Defendants bear the burden of proof in this case, and that he should survive summary judgment based upon a theory he intends to develop later, which the Court should read in a "light most favorable." (Dkt. #46 at

1, 5.) But plaintiff must oppose summary judgment with specific, non-speculative facts supporting the elements of his claim. (Local Rule 56.1(e)(3) ("To dispute an asserted fact, a party must cite specific evidentiary material that controverts the fact . . . .")). He must do "more than raise some metaphysical doubt as to the material facts; the non-moving party must come forward with specific facts showing that there is a genuine issue for trial." *Keri v. Board of Trustees of Purdue University*, 458 F.3d 620, 628 (7th Cir. 2006). Inferences supported only by speculation or conjecture do not preclude summary judgment. *McDonald v. Winnetka*, 371 F.3d 992, 1001 (7th Cir. 2004). Plaintiff cannot meet his burden.

II. Plaintiff Cannot Put Forth a Genuine Issue of Material Fact Supporting the Intent Element of His ADA Claim

Plaintiff concedes that he must show deliberate indifference (Dkt. #46 at 5), but asserts that he will meet this showing based upon argument and jury instructions. (*Id.* citing Seventh Circuit Pattern Jury Inst. 4.04). There is no evidence that meets those jury instructions. For example, there is no evidence that Officer Tyler knew that plaintiff needed an accommodation, nor that she failed to act when Keeling went to his cell. Plaintiff conceded as much when he dropped his claims against her. Miscommunication or paperwork errors do not constitute deliberate indifference. Negligence alone cannot support a Title II ADA claim. *Morris v. Kingston*, 368 Fed. Appx. 686, 690 (7th Cir. 2010). Similarly, an administrative error that allegedly led to injury forty-five minutes after the Plaintiff went to his cell does not reach the level of deliberate indifference. *Burton v. Downey*, 805 F.3d 776, 785 (7th Cir. 2015) ("a two-day delay [in providing medication] is not enough, standing alone, to show a culpable mental state. The delay may or may not have been negligent, but it did not constitute deliberate indifference.").

Instead of citing specific evidence supporting his claim, Plaintiff claims he will meet this element "with evidence that a correctional officer refused to follow the order by the intake nurse to assign plaintiff to a lower bunk." (Dkt. #46 at 4). But he does not cite any evidence to that effect. There is no evidence that Officer Tyler refused an order; rather, the evidence suggests that the second, more recent special needs form was at play—the one indicating no restrictions. (Dkt. #42 at PageID 188.)

Officer Tyler testified that she follows the forms she has in hand when she makes the bunk assignments, and there is no evidence contradicting that statement. (See Tyler Dep. at 16:14–22, copied directly below.) On the contrary, Officer Tyler established that a classification officer makes the cell and bed assignment, and that she as the pod officer merely follows the dictates of that assignment:

> **Q.** [by Mr. Flaxman] Back in June of 2022 do you remember seeing a lower bunk form for Mr. Keeling?
>
> **A.** [by Officer Tyler] No.
>
> **Q.** Who's the officer who decides – well, let me go back. Does the officer who escorts the prisoner from booking to the pod take care of seeing that the detainee gets the lower bunk when they have a lower bunk pass?
>
> A. No.
>
> Q. Whose responsibility is that?
>
> A. That's the classification officer.
>
> (Tyler Dep. at 12:21–13:7.)
>
> Q. And so are you the officer who decided which bunk Mr. Keeling would be?
>
> A. No.
>
> Q. Which cell Mr. Keeling would be placed in?
>
> A. No.

> Q. Who was that officer?
>
> A. That had to have been the classification officer.
>
> (Tyler Dep. at 16:14–22.)
>
> Q. I am doing it again. Does the person get placed in the cell before the classification officer has made a cell assignment?
>
> A. No.
>
> (Tyler Dep. at 18:19–22.)
>
> Q. Do you have a recollection of any detainee ever telling you ["]I can't go into an upper bunk, I've been assigned a lower bunk?["]
>
> A. Yes.
>
> Q. And was Mr. Keeling one of those?
>
> A. No. I don't recall him at all.
>
> Q. What do you do when you receive that kind of complaint?
>
> A. I basically look into it. I tell him have a seat. If I've—if I can see that there is a problem, that they look like they're detoxing or alcohol withdrawing or, you know, signs of anything that—I will tell them to have a seat while I contact the nurse.
>
> (Tyler Dep. at 20:15–21:4, SOF #19.)

There is certainly no deliberate indifference that could be inferred from that testimony. And this is true even if the Court believes that some *other* officer told Keeling that "this is not a hotel," which is merely a true statement. The Lake County Jail is indeed not a hotel, where inmates might choose a room or bed of their liking.

Plaintiff claims that this case is similar to *McDaniel v. Syed*, but the only similarity to that case is that it also involved an upper bunk assignment. 115 F.4th 805 (7th Cir. 2024). There, the plaintiff claimed that during his one-year incarceration, officers observed him having trouble taking stairs without the use of a walker and missing meals due to his physical limitations. *Id*. at 824. The plaintiff had made repeated requests for no-stairs assignments of which correctional officers were demonstrably aware. *Id*.

Here, Plaintiff had just arrived at the jail. Medical personnel had assigned him to a top bunk, then later to a lower bunk. (SOF #42 at ¶¶ 3–7.) Officer Tyler directed him to his cell. Unlike in *McDaniel*, where plaintiff was denied an accommodation for over a year, here Plaintiff was placed in his cell at 3:48 p.m. and sustained injury at 4:35 p.m. (SOF #42, at ¶ 24.) This 45-minute window did not provide an opportunity for Officer Tyler to observe that Plaintiff needed an accommodation, and certainly no evidence that she was deliberately indifferent to his needs.

III. Plaintiff Cannot Invoke *Respondeat Superior* to Make up for the Lack of Evidence

Plaintiff attempts to distract from his lack of evidence by invoking *respondeat superior* liability.[1] But he still has to make clear that some employee of the Sheriff's Office had the knowledge requisite to establish, at minimum, "deliberate indifference." *Lacy v. Cook County*, 897 F.3d 847, 862–63 (7th Cir. 2018). Agency liability requires plaintiff to prove the elements of his claim against an agent of the defendant. Plaintiff has not done so. Plaintiff has not identified an agent who was deliberately indifferent to Plaintiff's alleged disability.

Plaintiff was aware that non-defendant medical providers made the decision on his bunk assignment, and yet he took no discovery about those decisions. (SOF ¶ 11.) Further, Plaintiff cannot establish deliberate indifference by citing to facts allegedly known by correctional officers *after* he sustained injury. (Dkt. #46 at 9). Plaintiff cites to the fact that medical records following Plaintiff's transport to Vista hospital after his seizure note his history of high blood pressure. Plaintiff's statement of facts attempts to mislead the court into believing that this

[1] Plaintiff's claim that respondeat superior liability is "fully applicable to plaintiff's ADA claim" is certainly not as clear-cut as Plaintiff claims. *See Ravenn v. Village of Skokie*, 388 F. Supp. 3d 999, 1005-1008 (N.D. Ill. 2019) (describing circuit split on the issue and noting that "the Seventh Circuit has not addressed this question"). Nevertheless, Plaintiff's failure to identify a culpable agent fails to establish agency liability, and creates no genuine issue of material fact that would preclude summary judgment.

information came from officers, when the record suggests the Plaintiff's medical history came from *him*, not the officers. (Def.'s Response to Pl's Add'l SOF at ¶ 12). Regardless, that record has no bearing on what correctional officers knew at the time he was assigned to the upper bunk—the specific violation that Plaintiff says caused his injury.

IV. Plaintiff's Argument to Exclude the "Identification of Special Needs" Document is Frivolous

As noted in the intro, Plaintiff finds the facts established by the second *Identification of Special Needs* document so uncomfortable that he urges the Court to just conclude that it is fabricated. The document was produced to Plaintiff in discovery. Witnesses—the only two witnesses Plaintiff chose to depose—both testified about the document. (Kalfas Dep. at 33:22–34:22[2]; Tyler Dep. at 40:6–41:3[3]). Plaintiff now claims, as an alternative to his outrageous suggestion of corruption/fraud, that he was unfairly surprised by the affidavit of a records custodian to authenticate the document. (Dkt. #46 at 8).

Courts encourage the use of record custodian affidavits to authenticate documents for summary judgment. *See Akeredolu v. U.S.*, 2022 WL 952738 *3 (Mar. 30, 2022) (noting that "ideally" summary judgment movant would "have submitted an affidavit from a records custodian," but considering a business record without such an affidavit.) Also, on summary judgment, documents "must be capable of authentication at trial." *Gamon Plus, Inc. v. Campbell's Co.*, 764 F. Supp. 3d 690, 708 (N.D. Ill. 2025). But only "a prima facie showing of genuineness is required; the task of deciding the evidence's true authenticity and probative value is left to the jury." *Id.* (quoting *U.S. v. Fluker,* 698 F.3d 988, 999 (7th Cir. 2012)); *see generally Thanongsinh v. Board of Educ.*, 462 F.3d 762, 777 (7th Cir. 2006). The Plaintiff's objection that

[2] Dkt. #42 at PageID 200.
[3] Dkt. #42 at PageID 212.

the Defendants "are not capable of presenting any witness who is competent to authenticate this document" is belied by the affidavit of the Jail's Chief. Further, the requirement of someone "who has personal knowledge as to when the document was placed in plaintiff's jail records" is a misunderstanding of what Fed. R. Evid. 803(6) requires, which is merely someone who is familiar with the Jail's recordkeeping practices. *Thanongsinh*, 462 F.3d at 777.

Plaintiff urges the court to exclude the business record pursuant to Rule 37(c)(1), citing *Morris v. BNSF Railway Co*., 969 F.3d 753, 764-66 (7th Cir. 2020). It is quite a stretch to consider that case analogous, where there, the Seventh Circuit approved of excluding three witnesses who had been identified to give *substantive* testimony less than a month before trial. One would not call that late disclosure "harmless," to use the Rule 37 standard. Here, Defendants have supplied the court with a record-custodian affidavit to authenticate a document that Plaintiff not only has, but had the opportunity to question witnesses about. That is completely "harmless." Fed. R. Civ. P. 37(c)(1); *cf. Owens v. Ellison*, 13-CV-7568, 2017 WL 1251694, at *2 (N.D. Ill. Mar. 31, 2017) (disallowing new *substantive* witnesses, but at the pretrial order stage).

Plaintiff's reliance on the absence of a Rule 26(a) disclosure of Clouse is particularly rich where in one paragraph, Plaintiff complains about Defendants' reliance on a document produced in discovery, and then *in the next paragraph* he relies on medical records from Vista Medical Center to support his argument. (Dkt. #46 at 9). Yet the Plaintiff never disclosed a Rule 26(a) witness to testify about the authenticity of his medical records, so how could he possibly hope to admit them into evidence under his theories of the rules and evidence?

Because only one document is "consistent with plaintiff's testimony" (Dkt. #46 at 10), Plaintiff urges the court to exclude the document that doesn't fit his narrative. (How Plaintiff's experience as an inmate would have any bearing on the admissibility or authenticity of a

business record is unexplained.) He cites testimony from Deputy Chief Kalfas that supposedly supports his speculation about there being 'only one screening or Special Needs form,' but conveniently omits Kalfas's testimony about multiple forms:

> **Q.** If there are multiple Special Needs Forms, as we have just seen, you identified actually a bunch of exhibits. Many of them are copies, but I think we can agree that it looks like there were three different Special Needs Forms filled out, and two of them were prior to Keeling going into the classification pod; do you understand that?
>
> **A.** Yes.
>
> **Q.** What does the correctional staff do if there are multiple Special Needs Forms?
>
> **A.** When they basing a decision on where to house somebody, they will go with the most recent or the most current Special Needs Form and make their decision based on that.
>
> **Q.** And based on that metric, it appears that the most current one prior to him being moved to the classification pod --
>
> **A.** Exhibit 9.
>
> **Q.** Is Exhibit 9, Page 4 of 4?
>
> **A.** Yes.
>
> **Q.** And that was the Special Needs Form filled out by Gina Almas, A-l-m-a-s?
>
> **A.** Yes.

(Def.'s Response to Pl's Add'l SOF at ¶ 14.)

And even if the court were to credit Plaintiff's specious argument about the records-custodian affidavit, the document would be admissible at trial under Deputy Chief Kalfas's testimony. (See Def's 26(a) disclosures, ECF Dkt. #48 at PageID 278, stating "DC Kalfas is likely to have knowledge about how Keeling moved throughout the jail during his stay, and how information from medical records is or was transmitted to the correctional staff members.") DC Kalfas also provided deposition testimony about the existence of multiple special needs forms.

(Def.'s Response to Pl's Add'l SOF at ¶ 14). Properly authenticated documents, although such documents are not admissible in that form at trial, can be used in a motion for summary judgment if appropriately authenticated by affidavit or declaration. *See U.S. v. One Parcel of Real Property*, 904 F.2d 487, 491–492 (9th Cir.1990). Evidence presented in support of summary judgment need not be in admissible form, but admissible in content. *Winkskunas v. Birnbaum*, 23 F.3d 1264 (7th Cir. 1994) ("[A] substitution of oral testimony for a summary of that testimony in an affidavit, would make the evidence admissible at trial.")

V. Plaintiff Cannot Establish Causation

Plaintiff must show that his injury was caused by the alleged unconstitutional acts. Plaintiff does not even attempt to address the precedent cited in Defendants' motion. Plaintiff must show that the failure to provide him an ADA accommodation caused his injury—namely, a seizure. *A.H. by Holzmueller*, 881 F.3d 587, 593 (7th Cir. 2018).

Expert testimony is required to establish causation. *Myers* v. *Ill. Cen. R.R. Co.*, 629 F.3d 639, 643 (7th Cir. 2010); *see also Henderson* v. *Sheahan*, 196 F.3d 839, 848 (7th Cir. 1999) ("Ordinarily, to obtain an award of compensatory monetary damages under § 1983, a plaintiff must demonstrate both that he has suffered an 'actual' present injury and that there is a causal connection between that injury and the deprivation of a constitutionally protected right caused by a defendant."). Plaintiff declined to disclose an expert to support causation. (Dkt. # 38)

Plaintiff's attorney certainly knows this is Plaintiff's burden, as he was so instructed by the court in *Anderson v. Sheriff of Cook County*, 2016 WL 3612061, *3–4 (N.D. Ill. July 16, 2016) (granting summary judgment where plaintiff failed to proffer any expert testimony that delay in treating high blood pressure caused or exacerbated inmate's stroke.) (K. Flaxman, counsel).

And the Court should not be persuaded by Plaintiff's *res ipsa loquitur* argument that there is no other explanation for the seizure other than the top bunk assignment. Plaintiff initially alleged that he was later "misdiagnosed" with symptoms of alcohol detoxification at McHenry County jail in the days following his seizure. (Dkt. # 1, ¶ 22, at PageID 4). Had Plaintiff presented an expert as to causation, Defendants certainly would have countered that with expert testimony based upon medical documents produced by McHenry County noting their diagnosis of alcohol withdrawal. But Plaintiff never bothered to tie up causation in this case, despite this Court's early warning that Plaintiff had not laid out a clear theory of causation. (*See* Order, Dkt. # 18 at 3).

In Plaintiff's theory of the case, and in the absence of any expert testimony, any injury Plaintiff sustained when he was on the top bunk must be compensable. Under Plaintiff's construction of the law, if he had had a heart attack or brain aneurysm or sudden blindness on the top bunk, a jury could just conclude because it happened, it was caused by the top bunk assignment. That is not the standard of evidence required to survive summary judgment and the fact that Plaintiff cites not one case or legal principle to defend his claim underscores that conclusion.

VI. Conclusion

Plaintiff has failed to oppose defendants' motion for summary judgment by presenting specific evidence supporting his claims. He cannot show that any Lake County Sheriff's employee showed "deliberate indifference," and he cannot establish causation for his injuries. With no genuine issues of material fact, the Court should enter judgment as a matter of law as to the Sheriff of Lake County and the County of Lake.

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