

1 [The following is an extract from a 15 page draft court order for the Arizona District Court
2 regarding a summary judgment motion by an Arizona Corrections Officer. The relevant
3 matter concerned a §1983 complaint by a prisoner alleging excessive force in violation of the
4 Eighth Amendment by a Corrections Officer. The following extract consists of the relevant
5 standards, analysis, and conclusion.]
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8 **III. Summary Judgment Standard**

9 A court must grant summary judgment “if the movant shows that there is no genuine
10 dispute as to any material fact and the movant is entitled to judgment as a matter of law.”
11 Fed. R. Civ. P. 56(a); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). Under
12 summary judgment practice, the movant bears the initial responsibility of presenting the basis
13 for its motion and identifying those portions of the record, together with affidavits, that it
14 believes demonstrate the absence of a genuine issue of material fact. Celotex, 477 U.S.
15 at 323.

16 If the movant meets its initial responsibility, the burden then shifts to the nonmovant
17 to demonstrate the existence of a factual dispute and that the fact in contention is material,
18 i.e., a fact that might affect the outcome of the suit under the governing law, and that the
19 dispute is genuine, i.e., the evidence is such that a reasonable jury could return a verdict for
20 the nonmovant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 250 (1986) ; see Triton
21 Energy Corp. v. Square D. Co., 68 F.3d 1216, 1221 (9th Cir. 1995). The nonmovant need not
22 establish a material issue of fact conclusively in its favor, First Nat’l Bank of Ariz. v. Cities
23 Serv. Co., 391 U.S. 253, 288-89 (1968); however, it must “come forward with specific facts
24 showing that there is a genuine issue for trial.” Matsushita Elec. Indus. Co., Ltd. v. Zenith
25 Radio Corp., 475 U.S. 574, 587 (1986) (internal citation omitted); see Fed. R. Civ. P.
26 56(c)(1).
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1 At summary judgment, the judge’s function is not to weigh the evidence and
2 determine the truth but to determine whether there is a genuine issue for trial. Anderson, 477
3 U.S. at 249. In its analysis, the court must believe the nonmovant’s evidence, and draw all
4 inferences in the nonmovant’s favor. Id. at 255.

5 **IV. Excessive Force**

6 Whenever a prison official stands accused of using excessive force in violation of the
7 cruel and unusual punishment clause of the Eighth Amendment, the appropriate inquiry is
8 “whether force was applied in a good faith effort to maintain or restore discipline or
9 maliciously and sadistically for the very purpose of causing harm.” Hudson v. McMillian,
10 503 U.S. 1, 7 (1992). In making this determination, a court considers five factors: (1) the
11 extent of the injury suffered by the inmate, (2) the need to use the force, (3) the relationship
12 between the need and the amount of force used, (4) the threat “reasonably perceived” by the
13 officials, and (5) “any efforts made to temper the severity” of the force. Id. (citing Whitley v.
14 Albers, 475 U.S. 312, 321 (1986)). When reviewing these factors, the court must remember
15 that prison officials “should be accorded wide-ranging deference in the adoption and
16 execution of policies and practices that in their judgment are needed to preserve internal
17 order and discipline and to maintain institutional security.” Whitley, 475 U.S. at 321-22
18 (quoting Bell v. Wolfish, 441 U.S. 520, 547 (1979)).

19 In analyzing Plaintiff’s claim under the Whitley factors, the Court applies the facts as
20 presented by the parties and, where the facts are disputed, takes Plaintiff’s facts as true. See
21 Anderson, 477 U.S. at 255. But, “[u]nless it appears that the evidence, viewed in the light
22 most favorable to the plaintiff, will support a reliable inference of wantonness in the
23 infliction of pain under the standard we have described, the case should not go to the jury.”
24 Whitley, 475 U.S. at 322.

25 **A. Extent of Injury**

1 treatment in relation to the incident with Rice. (DSOF, Ex. C, Decl. Of J. Respicio-Moriarty
2 ¶¶ 4-5). Additionally, Cardenas appears to admit that no doctor has ever concluded that his
3 headaches are in any way connected to the incident with Rice. (Res. Dep. I 49:18-23).

4 In his Response, Plaintiff claims that there is a genuine issue of material fact regarding
5 “whether Mr. Cardenas did sustain an injury” from Rice’s physical contact with him.
6 (Response at 4:7-8). The Court disagrees and finds that there is no evidence supporting
7 Plaintiff’s claim as to the issue of injury. Cardenas admits that he was unaware of any
8 external injuries in the immediate aftermath of the incident. Cardenas admits that there are
9 no medical records indicating that he suffered any injuries as a result of Rice’s physical
10 contact. Cardenas admits that not one doctor has attributed any injuries to the physical
11 contact. Cardenas’s conclusory assertions are all that support his claim that he suffered an
12 injury at Rice’s hand. Accordingly, this factor weighs in Defendant Rice’s favor.

13 **B. Need for Force**

14 Defendant Rice asserts that her use of force was necessary because of the penological
15 interest of maintaining authority. (Motion at 10:12-13, 23-24). She believed that if she did
16 not physically reassert herself, “her authority over the entire unit would be compromised.”
17 (Id. at 11:3-5). Prison officials “should be accorded wide-ranging deference in the adoption
18 and execution of policies and practices that in their judgment are needed to preserve internal
19 order and discipline and to maintain institutional security.” Whitley, 475 U.S. at 321-22
20 (quoting Bell v. Wolfish, 441 U.S. 520, 547 (1979)).

21 Cardenas repeatedly undermined Rice’s authority with his actions and behavior. He
22 questioned Rice’s methods for conducting health and welfare checks in a disrespectful
23 manner that other prisoners could hear. (Res. Dep. I 16:20-17:4). When Cardenas later
24 joined Rice outside of his living area to discuss his earlier comments, he walked away from
25 the conversation without her leave. (Id. at 20:19-22). Cardenas asserts that he does not recall
26 what he said before angrily walking away from Rice, (id. 20:19-20); however, Rice asserts
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1 that he called her a “fucking bitch,” (DSOF at ¶ 43). While walking back to his cell,
2 Cardenas ignored Rice’s commands and, apparently, did not know she was following him.
3 (DSOF Dep. 33:16-25). Cardenas then sat down, facing away from her, and put his
4 headphones on. (Id. 40:3-12). He was unable to hear Rice over his headphones and was
5 unaware she had entered his cell behind him. (Id. 40:11-13, 22-24).

6 Cardenas repeatedly rejected Rice’s authority. He questioned her tactics in carrying
7 out her duties. He ended their conversation and returned to his cell without her leave. He
8 ignored her commands and her attempts to speak with him. By putting on his headphones
9 and facing away from Rice, Cardenas made himself unreceptive to her commands, and thus
10 her authority. She was left with few options for reasserting her authority. If Rice allowed
11 Cardenas to openly flout her authority, she ran the risk that perhaps he, and other inmates,
12 would be emboldened to do so in the future. As a result, Rice physically engaged Cardenas
13 in a manner that she thought was appropriate at the time in order to maintain her authority
14 and order and discipline within the unit. Accordingly, this factor weighs in favor of
15 Defendant Rice.

16 **C. Amount of Force Used**

17 The amount of force employed by Rice against Cardenas is the most contentious
18 disagreement between the parties. Cardenas asserts that Rice struck him in the back of the
19 head so that his headphones came off. (DSOF Dep. 41:19-25). Rice asserts that she plucked
20 at Cardenas’s headphones with two fingers and may have grazed his scalp. (DSOF ¶ 49-51).

21 In its analysis, the Court must believe the nonmovant’s evidence, and draw all
22 inferences in the nonmovant’s favor. Anderson, 477 U.S. at 255. As the Court intimated
23 above, there is no evidence to support Cardenas’s claim that Rice struck him in the head and
24 merely did not remove his headphones as she contends. There is no medical evidence of any
25 injury as a result of the incident. Cardenas was unaware of any external injury in the wake of
26 the incident. He did not seek medical attention in the aftermath. He did not see Rice when
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1 she made physical contact with him. Additionally, Cardenas does not know whether Rice’s
2 hand was open or closed when she made contact with him. (DSOF Dep. 42:14-15).

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4 Nevertheless, even if the Court discounts the complete lack of evidence and accepts
5 Cardenas’s assertion that Rice struck him in the head, her behavior falls short of the force
6 necessary to constitute an Eight Amendment violation. In hindsight, Rice admits that making
7 any sort of physical contact with Cardenas in order to get his attention was imprudent;
8 however, “[t]he infliction of pain in the course of a prison security measure, therefore, does
9 not amount to cruel and unusual punishment simply because it may appear in retrospect that
10 the degree of force authorized or applied for security purposes was unreasonable, and hence
11 unnecessary in the strict sense.” Whitley, 475 U.S. at 319.

12 So, “the question whether the measure taken inflicted unnecessary and wanton pain
13 and suffering ultimately turns on whether force was applied in a good-faith effort to maintain
14 or restore discipline or maliciously and sadistically for the purpose of causing harm.”
15 Whitley, 475 U.S. at 313. As the Court explained above, Cardenas repeatedly flouted Rice’s
16 authority in an open and disrespectful manner audible to other prisoners. Rice feared that if
17 she failed to reestablish her authority over Cardenas, her authority over the entire unit would
18 be weakened. By putting on headphones and facing away from Rice, he made himself
19 inaccessible merely through the use of verbal contact. Rice’s use of force, regardless
20 whether completely necessary when considered in hindsight, was a good faith effort to get
21 his attention and maintain her authority. Rice sought to maintain order and discipline within
22 the unit, not to cause harm. Accordingly, this factor weighs in favor of Rice.

23 **D. Threat Perceived by Defendant**

24 The Court must consider “the extent of the threat to the safety of staff and inmates, as
25 reasonably perceived by the responsible officials on the basis of the facts known to them . . .
26 .” Whitley, 475 U.S. at 321. As the Court explained above, Rice perceived Cardenas’s
27 actions as a threat to her authority and the order and stability of the unit. “[I]n making and
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1 carrying out decisions involving the use of force to restore order in the face of a prison
2 disturbance, prison officials undoubtedly must take into account the very real threats the
3 unrest presents to inmates and prison officials alike” Id. at 320. If Rice failed to take
4 action in response to Cardenas’s insubordination, other prisoners might be emboldened to
5 take actions that further undermined her authority and that threatened the order of the unit
6 and the safety of those within it. This factor weighs in favor of Defendant Rice.

7 **E. Efforts to Temper Severity of Force**

8 In Rice’s quest to shore up her authority in the face of Cardenas’s insubordination,
9 Rice repeatedly attempted to confront Cardenas about his actions. (DSOF ¶¶ 41-49).
10 Cardenas disengaged from their conversation and either acted in a manner that prevented him
11 from hearing Rice, or he simply ignored her commands. (PSOF ¶¶ 12-14). Rice repeatedly
12 attempted to engage Cardenas through speech alone, but to no avail. (DSOF ¶¶ 41-49).

13 As a result of a Cardenas’s repeated transgressions and unresponsiveness, Rice
14 resorted to physical force in order to get his attention and assert her authority; however, there
15 is no evidence that the force employed by Rice was anything beyond *de minimis* contact
16 incidental to removing Cardenas’s headphones. Regardless of the wisdom of employing any
17 physical force in this instance, Rice took multiple steps to temper the severity of the force.
18 She repeatedly attempted to reestablish her authority by confronting Cardenas without
19 employing any force. Once that proved ineffective and she made the decision to use force,
20 she did so in such a way as to minimize injury while still commanding Cardenas’s attention.
21 This factor weighs in favor of Defendant Rice.

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23 **V. Conclusion**

24 In sum, the Court concludes that the Whitley factors weight heavily in favor of
25 Defendant Rice. Plaintiff Cardenas has failed to meet the threshold of evidence required to
26 establish excessive force. See Henderson v. City of Simi Valley, 305 F.3d 1052, 1061 (9th
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1 Cir. 2002) (where evidence of excessive force is “woefully sparse,” the plaintiff fails to raise
2 a material issue of fact regarding an excessive force claim). Cardenas fails to provide
3 evidence supporting that Rice employed force “sadistically for the very purpose of causing
4 harm” rather than as “a good faith effort to maintain or restore discipline.” Hudson, 503 U.S.
5 7.

6 There is no genuine dispute of material fact, and Cardenas fails to persuade the Court
7 with evidence to the contrary. Cardenas alleges that there are issues as to the injury he
8 suffered and as to the amount of force employed by Rice; however, he fails to provide
9 evidence to support either notion.

10 The Court finds no evidence to support Plaintiff’s claim for violation of his Eighth
11 Amendment rights. Accordingly, Defendant’s motion for summary judgment is granted. As
12 a result, the Court need not address Defendant’s alternate argument regarding qualified
13 immunity.

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15 **IT IS ORDERED:**

16 (1) The reference to the Magistrate Judge is withdrawn as to Defendants’ Motion for
17 Summary Judgment (Doc. #43).

18 (2) Defendants’ Motion for Summary Judgment (Doc. #43) is **granted**, and the
19 **claim is dismissed**.

20 (3) The Clerk of Court must enter judgment accordingly.
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