

PUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7647

HARRIS EMANUEL FORD,

Plaintiff - Appellant,

v.

ERIK A. HOOKS; KENNETH E. LASSITER; KATY POOLE; DEAN LOCKLEAR;
LIEUTENANT KAREN HENDERSON; QUEEN GERALD; JERRY INGRAM; SGT.
CAMERON E. GADDY,Defendants - Appellees.

Appeal from the United States District Court for the Middle District of North Carolina, at
Greensboro. Loretta C. Biggs, District Judge. (1:19-cv-00444-LCB-LPA)

Argued: March 19, 2024

Decided: July 2, 2024

Before NIEMEYER, GREGORY, and AGEE, Circuit Judges.

Affirmed in part, vacated in part, and remanded by published opinion. Judge Niemeyer
wrote the opinion, in which Judge Gregory and Judge Agee joined.

ARGUED: Abigail Haglage, GEORGETOWN UNIVERSITY LAW CENTER,
Washington, D.C., for Appellant. Orlando Luis Rodriguez, NORTH CAROLINA
DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for Appellees. **ON BRIEF:**
Erica Hashimoto, Director, Salvatore Mancina, Supervising Attorney, Yiyang Wang,
Student Counsel, Appellate Litigation Program, GEORGETOWN UNIVERSITY LAW
CENTER, Washington, D.C., for Appellant. Joshua H. Stein, Attorney General, NORTH
CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for Appellees.

NIEMEYER, Circuit Judge:

Harris Ford, an inmate in the North Carolina Department of Corrections prison system, commenced this action against six prison officials under 42 U.S.C. § 1983, claiming that, by failing to protect him from a fellow inmate who attacked him with a shank and severely injured him, the prison officials violated his Eighth Amendment rights. Ford alleged that he had made prison officials aware of the risk of such an attack by filing numerous complaints and grievances but that the officials were deliberately indifferent to them, giving rise to the attack.

The district court granted the prison officials summary judgment, concluding that Ford's complaints and grievances had not been sufficiently specific to enable the officials to investigate and respond and that Ford had failed to demonstrate the mens rea of deliberate indifference necessary for an Eighth Amendment violation.

We affirm the district court's judgment as to five of the six prison officials whom Ford named as defendants. But as to Officer Jerry Ingram, we conclude that, "taking the facts in the best light for the nonmoving party," *Ausherman v. Bank of America Corp.*, 352 F.3d 896, 899 (4th Cir. 2003) (noting that summary judgment is appropriate if, "taking the facts in the best light for the nonmoving party, no material facts are disputed and the moving party is entitled to judgment as a matter of law"), there was a question of fact that precluded summary judgment, namely whether Officer Ingram knowingly aggravated the risk to Ford and possibly contributed to the cause of the attack. Accordingly, as to Officer Ingram, we vacate and remand for further proceedings.

I

Shortly after Ford's 2004 incarceration at the Scotland Correctional Institution in Laurinburg, North Carolina, for first-degree rape, Ford cooperated with a North Carolina district attorney in successfully prosecuting a murder charge against a fellow inmate. At Ford's request, the prosecutor advised the North Carolina Department of Corrections of Ford's cooperation and his desire to be transferred due to safety concerns. In an effort to protect Ford from reprisal, the Department of Corrections moved Ford to various institutions over the next decade. On March 15, 2017, he was transferred back to the Scotland Institution, where he had initially been housed.

Shortly after arriving at the Scotland Institution, an inmate, who was allegedly a member of a gang, threatened Ford, "check off or get blowed," which Ford understood to mean he would be "shanked" if he did not receive protective custody. Ford reported the threat to prison officials and requested protective custody. In response, Officer Jerry Ingram had Ford temporarily placed in protective custody while he conducted an investigation of Ford's complaint. During the investigation, however, Ingram was unable to uncover the identity of the person who had made the threat, and, accordingly, he denied Ford's request for protective custody "due to inmate Ford not providing any names of the inmates[] who allegedly put a hit out on him." In a grievance that Ford subsequently filed, Ford said, "[T]he names of people[,] I do not know[.] [A]ll I know is nicknames." Following a three-step grievance review procedure in which different prison officials participated, the prison concluded that Ford had not provided "information that would allow a proper investigation," and Ford's grievance was denied.

About a month later, in April 2017, Ford was again threatened by a gang member, who told Ford to give him food, toiletries, and other supplies or “get blowed,” which Ford understood to mean get “shanked.” After Ford complied with the demand, two gang members nonetheless stabbed him with a shank and called him a snitch. They also warned him not to report the incident. Out of fear, Ford did not then report that incident.

Another month later, in early May 2017, Ford sent a letter to the Director of Prisons complaining that “inmates [we]re making shanks” and that he “feared for [his] safety.” The letter was forwarded to Warden Katy Poole at the Scotland Institution, who directed Officer Queen Gerald to conduct an investigation of the claims and “ensure a [protective custody] investigation has been completed.” Gerald did undertake the investigation but did not report back on its status for two years.

Also in May 2017, Ford complained that he was again threatened by a gang member, and again he was placed in protective custody while his complaint was investigated. During the investigation, Ford provided documentation demonstrating his cooperation with the North Carolina prosecutor some 10 years earlier, but he failed to provide any names or additional information to advance the current investigation. His complaint was therefore rejected, and his subsequent related grievance was likewise denied.

After Ford’s second request for protective custody was denied and Ford was returned to the general population, Officer Ingram entered his cell and yelled at him, “[w]ithin earshot of other inmates on the unit,” demanding that Ford name the individuals threatening him. Ford refused to publicly answer Officer Ingram. Ford then filed another request for protective custody in which he complained about Officer Ingram’s conduct,

stating, “[T]he reason I make this request is d[ue] to the fact all the inmates heard what was said and now they want to harm [me] due to the fact that they believe I’m a snitch. . . . I can identify the individuals I got problems with and I have documents to show that some of these people are still here. I can give you the names of these people. I’ll give this information directly to [Officer] Gerald in a statement.” The officer who reviewed Ford’s request, however, denied it, stating that the evidence he was able to uncover was “insufficient due to no names were given and no document from inmate [F]ord was given to state the names of the inmates involved.”

In a third grievance filed in late May 2017, Ford described the various earlier threats and, for the first time, revealed that he had been stabbed in April. He offered to view a photo array to identify those threatening him. This grievance, however, was again rejected, this time because Ford’s second grievance making similar claims was still pending.

Finally, Ford filed a general grievance in June 2017, including the complaints that had already been denied. This grievance was denied for lack of “enough information for the investigation.”

Three months later — on September 24, 2017 — inmate Jamal McRae stabbed Ford repeatedly with a shank, requiring that Ford receive dozens of stitches at the hospital. Ford and McRae, however, gave conflicting testimony about the circumstances of the attack. Ford said that McRae entered his cell and attacked him unprovoked. He stated that he had not touched McRae or said anything to him to provoke him. Ford concluded that McRae was a gang member and alleged that McRae called him a “snitch” during the attack.

McRae, however, told a significantly different story. He stated that he was “kicking it” with Ford in Ford’s cell going over McRae’s legal documents, which McRae had paid Ford \$600 to help prepare. McRae stated that, while preparing them food, Ford made sexual advances on him. He stated that he told Ford that he did not “play that way” and that, after some back and forth, he tried to grab his legal materials and leave the cell. McRae claimed that Ford then “grabbed him from behind and pulled him in his lap” and that they then started “tussling and it turned into a fight,” during which McRae used a shank in self defense. McRae stated that once Ford let him go, he ran out of the cell. After the incident, McRae’s legal materials were indeed found in Ford’s cell.

A video camera in the hallway, while capturing the aftermath of the events, was of limited use as to what occurred inside the cell.

Following the attack, Ford was transferred to another facility.

Ford filed his complaint in this action in April 2019, alleging, as relevant here, that six prison officials — Warden Katy Poole, Assistant Superintendent Dean Locklear, Captain Karen Henderson, Officer Queen Gerald, Officer Jerry Ingram, and Sergeant Cameron Gaddy — were deliberately indifferent to a substantial risk of the attack and resulting injuries and thus violated his Eighth Amendment rights. Following discovery, both Ford and the prison officials filed motions for summary judgment.

The district court — adopting a magistrate judge’s recommendations — granted summary judgment to the defendants. While the court identified several disputed facts, it concluded that there was insufficient evidence to show the prison officials’ deliberate indifference required for an Eighth Amendment violation.

From the district court's judgment dated October 26, 2021, Ford filed this appeal.

II

Ford contends that the six prison officials named as defendants in their individual capacity inflicted on him cruel and unusual punishment, in violation of the Eighth Amendment, because the attack on him and the injuries he sustained in September 2017 were a product of the officials' deliberate indifference to the risk of that injury.

It is well settled that the Eighth Amendment's prohibition against the infliction of "cruel and unusual punishments" reaches beyond a prisoner's sentence to "the treatment of a prisoner . . . in prison and the conditions under which he is confined." *Helling v. McKinney*, 509 U.S. 25, 31 (1993). While that construction "does not mandate comfortable prisons," *Rhodes v. Chapman*, 452 U.S. 337, 349 (1981), it does place on prison officials "a duty to protect prisoners from violence at the hands of other prisoners," *Farmer v. Brennan*, 511 U.S. 825, 833 (1994) (cleaned up). In short, "[b]eing violently assaulted in prison is simply not 'part of the penalty that criminal offenders pay for their offenses against society.'" *Id.* at 834 (quoting *Rhodes*, 452 U.S. at 347). But that said, "it is not . . . every injury suffered by one prisoner at the hands of another that translates into constitutional liability for prison officials." *Id.* Such injury must be the product of prison officials' *deliberate indifference* to the risk of injury.

Thus, to demonstrate a violation of the Eighth Amendment, a prisoner must satisfy two requirements — first, he must demonstrate that the deprivation was, "objectively, sufficiently serious," and second he must demonstrate that the prison official had a

“sufficiently culpable state of mind.” *Farmer*, 511 U.S. at 834 (cleaned up). And in cases challenging conditions of confinement — including those alleging prison officials’ failure to protect an inmate from other inmates — that state of mind must be at least “deliberate indifference” to the inmate’s “health or safety.” *Id.* (cleaned up); *see also Brown v. N.C. Dep’t of Corr.*, 612 F.3d 720, 723 (4th Cir. 2010).

“Deliberate indifference is a very high standard,” and “a showing of mere negligence will not meet it.” *Parrish ex rel. Lee v. Cleveland*, 372 F.3d 294, 302 (4th Cir. 2004) (quoting *Grayson v. Peed*, 195 F.3d 692, 695 (4th Cir. 1999)). Instead, as the *Farmer* Court explained, “deliberate indifference” is a *culpable mens rea* that requires proof that the prison official subjectively “knew” of the substantial risk of harm to a prisoner and “consciously disregarded” it, thus incorporating the concept of criminal recklessness as defined in the Model Penal Code. *See* 511 U.S. at 837, 839. In sum, in circumstances such as those presented here, the prisoner must show both (1) “that the [prison] official in question subjectively recognized a substantial risk of harm” and (2) that the official also “subjectively recognized” that any actions he took in response “were inappropriate in light of that risk.” *Parrish*, 372 F.3d at 303 (cleaned up). It is not enough that the prison official *should have* recognized the risk and the inadequacy of his response. Instead, the official “actually must have perceived” both. *Id.*

Applying this standard to the circumstances before us, we conclude first that Ford has failed to establish both requirements with respect to Warden Poole. In Ford’s May 7, 2017 letter, which Warden Poole received, Ford stated that “inmates are making shanks” and that he “feared for [his] safety.” He also “asked for protection but [complained that]

nothing was done.” In response to the letter, Warden Poole directed Officer Gerald to “investigate [the] allegations” and “ensure a [protective custody] investigation has been completed.” She also stated that she had noticed that inmate Ford was presently in restrictive housing “due to a [protective custody] investigation being in process.” Not only did Warden Poole have no knowledge of any substantial risk of harm to Ford, she did not recognize that her response to the letter, directing an investigation, was an inappropriate one. In short, Ford failed to present evidence demonstrating that Warden Poole exhibited deliberate indifference to Ford’s circumstances.

With respect to Ford’s claims against four other prison officials — Assistant Superintendent Locklear, Captain Henderson, Sergeant Gaddy, and Officer Gerald — the level of knowledge that Ford demonstrated was significantly higher than that which may be imputed to Warden Poole. These officials were aware of Ford’s complaints requesting protective custody and the reasons for his fear of reprisal. To be sure, they recognized that they were addressing a fear arising out of Ford’s cooperation with prosecutors over 10 years earlier, but they also knew that Ford was claiming ongoing threats of harm by gang members purportedly arising from that cooperation. These officers were also aware that they were required by prison policy to investigate Ford’s claims and react appropriately by providing him with protection as needed. Indeed, none of these prison officials concluded or suggested that Ford’s complaints lacked merit. They did, however, uniformly conclude that they did not have enough information to carry out an appropriate investigation, and Ford has provided no evidence that he ever gave names or even nicknames in response to the prison officials’ investigatory efforts.

With respect to these officials, Ford thus adequately demonstrated the first prong of the “deliberate indifference” element of his Eighth Amendment claim — that the prison officials subjectively recognized a substantial risk of harm. But we conclude that he has not presented sufficient evidence to show that these officials were deliberately indifferent to his complaints because he has not demonstrated that they *consciously disregarded* the risks that he described — i.e., that they recognized that their responses were “inappropriate.” *Parrish*, 372 F.3d at 303. Ford does argue that the prison officials could have shown him “photos of gang members to help identify the source of the threats” or could have consulted with gang investigators “to determine whether and why Mr. Ford was being targeted.” This argument, however, amounts, at most, to one that the officials’ responses were “unreasonable” because there was more that they could have done. But such negligence is not enough to make an Eighth Amendment claim. *Id.* at 306–07.

Finally, as to Ford’s claim against Officer Ingram, Ingram’s circumstances for the most part are not unlike those of the other four prison officials who received Ford’s complaints; Ingram knew of Ford’s complaints and responded to them. Indeed, Officer Ingram tried more forcefully to investigate them by pressing yet harder for the identification of the perpetrators. But in doing so, his conduct raised a question of fact as to whether his response actually revealed a conscious disregard of a serious risk of harm that he knew was inappropriate.

As Ford claims, Officer Ingram, while carrying out his investigation of Ford’s complaints, came to Ford’s cell and “yell[ed] in a very loud voice” “[w]ithin ear shot of other inmates on the unit” that if Ford “want[ed] protective custody” he would have to tell

him “who in here [he had] a problem with.” Ford showed further that Ingram then left his cell and came back “yelling [about] the same thing” and then “asked [Ford] for a statement.” Ford asserted that as a result, “all the inmates heard what was said and now they want[ed] to harm” him because they thought he was a “snitch.” It is thus significant that while Officer Ingram asked Ford, who he had a problem with and why he wanted protective custody, by doing so in such a public manner, Ingram may perhaps have knowingly exacerbated the danger to Ford that officers had already recognized. *See Cox v. Quinn*, 828 F.3d 227, 233, 237 (4th Cir. 2016) (finding sufficient evidence that prison officials knew their response was unreasonable when they confronted the inmate’s attackers despite warnings that doing so would “put an X on [him] and make the situation worse”).

We conclude, in light of this evidence as viewed most favorably to Ford, that there were genuine factual disputes over whether Officer Ingram consciously disregarded a known risk of harm to Ford and whether such conscious disregard, if shown, was a sufficient cause of the harm Ford suffered. *See Ausherman*, 352 F.3d at 899. Accordingly, we vacate the district court’s summary judgment in favor of Officer Ingram and remand to permit further proceedings. As for the remaining prison officials, however, we affirm.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED