DOCKET NO. CV-20-6109842-S	:	STATE OF CONNECTICUT
TONY WEBB	:	SUPERIOR COURT
V.	:	JUDICIAL DISTRICT OF NEW HAVEN
	:	AT NEW HAVEN
CITY OF NEW HAVEN	:	April 16, 2024

MEMORANDUM OF DECISION
MOTION FOR SUMMARY JUDGMENT (#130)

I.

FACTS

This action arises out of events following the plaintiff, Tony Webb's, arrest by police officers employed by the defendant, the City of New Haven, as members of the New Haven Police Department (NHPD), on or about October 26, 2018. On December 16, 2022, the plaintiff filed his revised complaint, alleging a negligence claim against the defendant. Specifically, the plaintiff alleges that during his arrest, NHPD officers handcuffed him before he was transported to NHPD headquarters at One Union Avenue and he complained to the officers that the handcuffs were too tight, but they were not loosened. He alleges that after arriving at NHPD headquarters, he continued to complain about the tight handcuffs, but was ignored, and that he was then dragged to a detention cell and left there handcuffed for hours. The plaintiff claims that the NHPD officers acted negligently by ignoring his complaints, improperly applying the handcuffs by failing to double-lock them, and by keeping him handcuffed for an unreasonably long time even though he was in a detention cell, which resulted in potentially permanent injuries to his hands, wrists, and forearms.

The defendant filed its motion for summary judgment along with a supporting memorandum and four exhibits on September 25, 2023, on, *inter alia*, governmental immunity grounds. Docket Entry No. 130. On November 13, 2023, the plaintiff filed his objection to the defendant's motion. Docket Entry No. 131. The plaintiff also manually filed an exhibit in support of his objection on December 15, 2023. Docket Entry No. 132. The court heard oral argument on the motion on December 18, 2023.

The court reviewed the defendant's manually filed exhibit, a video of the incident. The video starts with the plaintiff being brought from a squad car into a processing area. The plaintiff is handcuffed with his hands behind his back when he is first seen in the video. About four minutes into the video, an officer removes the plaintiff's handcuffs so that he can remove certain clothing. The plaintiff then argues with the officers about removing and giving them his dog tags, but eventually does so. About eight minutes and thirty seconds into the video, the plaintiff is then handcuffed for a second time, with his hands in front of his body. Approximately twenty seconds later, the plaintiff states, "these cuffs is [expletive] tight like on these wrists" and notifies the officer that he was recently in a motorcycle accident. The officer then asks, while starting to inspect the handcuffs, "which one is tight," and the plaintiff states "both of these are tight on my wrist . . . ." During his inspection of the handcuffs, the officer is seen in the video moving them up and down the plaintiff's wrist, before stating "I can see the scar [from the motorcycle accident] but they move pretty freely, so I don't understand how they're tight."

The police then continue processing the plaintiff, and following an extended discussion about signing a form, at about thirteen minutes into the video, the officers snatch the form away from the defendant and began forcibly maneuvering him out of the processing area into a holding cell. As this is happening, the plaintiff repeatedly states, "I'm not resisting" and exclaims "look

what you’re doing to my hands.” After being placed in the cell by the officers, the defendant then spits on or at one of the officers. At this point, the officers enter the cell, force the defendant to the ground, and remove his handcuffs so that they can be reapplied to behind his body. During the removal and reapplication of the handcuffs in the holding cell, which occurs around fifteen minutes into the video, the defendant asked the officers to “let me interlock my fingers” and to “let me interlock my hands.” The video ends with the plaintiff complaining about the way he was treated by the officers to an NHPD chief who observed the events in the holding cell. The video does not show the plaintiff complaining about tight handcuffs at any point after he is brought to the holding cell.

II.

LEGAL ANALYSIS

A.

Standard of Review

Under Practice Book § 17-49, summary judgment is properly rendered only where “the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” (Internal quotation marks omitted.) *Graham* v. *Commissioner of Transportation*, 330 Conn. 400, 414-15, 195 A.3d 664 (2018). “[S]ummary judgment is appropriate only if a fair and reasonable person could conclude only one way. . . . [A] summary disposition . . . should be on evidence which a jury would not be at liberty to disbelieve and which would require a directed verdict for the moving party. . . . [A] directed verdict may be rendered only where, on the evidence *viewed in the light most favorable to the nonmovant*, the trier of fact could not reasonably reach any other

conclusion than that embodied in the verdict as directed." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Dugan* v. *Mobile Medical Testing Services, Inc.*, 265 Conn. 791, 815, 830 A.2d 752 (2003). "A genuine issue of material fact must be one which the party opposing the motion is *entitled to litigate under his pleadings* and the mere existence of a factual dispute apart from the pleadings is not enough to preclude summary judgment. . . . *The facts at issue* [*in the context of summary judgment*] *are those alleged in the pleadings*. . . ." (Emphasis in original; internal quotation marks omitted.) *Straw Pond Associates, LLC* v. *Fitzpatrick, Mariano & Santos, P.C.*, 167 Conn. App. 691, 728-29, 145 A.3d 292, cert. denied, 323 Conn. 930, 150 A.3d 231 (2016). "A material fact has been defined adequately and simply as a fact which will make a difference in the result of the case." (Internal quotation marks omitted.) *Buell Industries, Inc.* v. *Greater New York Mutual Ins. Co.*, 259 Conn. 527, 556, 791 A.2d 489 (2002).

"In ruling on a motion for summary judgment, the court's function is not to decide issues of material fact . . . but rather to determine whether any such issues exist." (Internal quotation marks omitted.) *RMS Residential Properties, LLC* v. *Miller*, 303 Conn. 224, 233, 32 A.3d 307 (2011). "A motion for summary judgment is properly granted if it raises at least one legally sufficient defense that would bar the plaintiff's claim and involves no triable issue of fact." (Internal quotation marks omitted.) *Thivierge* v. *Witham*, 150 Conn. App. 769, 773, 93 A.3d 608 (2014). Therefore, "[w]hen a court, in ruling on a motion for summary judgment, is confronted with conflicting facts, resolution and interpretation of which would require determinations of credibility, summary judgment is not appropriate." *Straw Pond Associates, LLC* v. *Fitzpatrick, Mariano & Santos, P.C.*, supra, 167 Conn. App. 710.

"The movant has the burden of showing the nonexistence of such issues but the evidence thus presented, if otherwise sufficient, is not rebutted by the bald statement that an issue of fact does exist. . . . To oppose a motion for summary judgment successfully, the nonmovant must recite specific facts . . . which contradict those stated in the movant's affidavits and documents. . . . The opposing party to a motion for summary judgment must substantiate its adverse claim by showing that there is a genuine issue of material fact together with the evidence disclosing the existence of such an issue." (Internal quotation marks omitted.) *Parnoff* v. *Aquarion Water Co. of Connecticut*, 188 Conn. App. 153, 165, 204 A.3d 717 (2019). "While [a party's] deposition testimony is not conclusive as a judicial admission; General Statutes § 52-200; it is sufficient to support entry of summary judgment in the absence of contradictory competent affidavits that establish a genuine issue as to a material fact." *Collum* v. *Chapin*, 40 Conn. App. 449, 450 n.2, 671 A.2d 1329 (1996).

B.

General Statutes § 52-557n - Generally

The defendant argues that it is entitled to summary judgment in this matter because: (1) there is no genuine issue of material fact that the claim is barred by governmental immunity; (2) there is no genuine issue of material fact that the plaintiff's negligence claim fails as a matter of law; and (3) the plaintiff's negligence claim fails because he has not disclosed an expert witness, which his claim requires. The plaintiff counters that the identifiable person-imminent harm exception to the defendant's governmental immunity applies because the harm the plaintiff suffered was limited in time and geographic scope and took place while he was in police custody. He also claims that the video recording of the incident proves this because it demonstrates that he notified NHPD officers that he was in pain and that the handcuffs were too tight.

"[T]he ultimate determination of whether [governmental] immunity applies is ordinarily a question of law for the court . . . [unless] there are unresolved factual issues material to the applicability of the defense . . . [in which case] resolution of those factual issues is properly left to the jury." (Internal quotation marks omitted.) *Washburne* v. *Madison*, 175 Conn. App. 613, 629, 167 A.3d 1029 (2017), cert. denied, 330 Conn. 971, 200 A.3d 1151 (2019).

"As our Supreme Court has explained, [m]unicipal officials are immunized from liability for negligence arising out of their discretionary acts in part because of the danger that a more expansive exposure to liability would cramp the exercise of official discretion beyond the limits desirable in our society. . . . Discretionary act immunity reflects a value judgment that—despite injury to a member of the public—the broader interest in having government officers and employees free to exercise judgment and discretion in their official functions, unhampered by fear of second-guessing and retaliatory lawsuits, outweighs the benefits to be had from imposing liability for that injury. . . . In contrast, municipal officers are not immune from liability for negligence arising out of their ministerial acts. . . . This is because society has no analogous interest in permitting municipal officers to exercise judgment in the performance of ministerial acts." (Internal quotation marks omitted.) *Silberstein* v. *54 Hillcrest Park Associates, LLC*, 135 Conn. App. 262, 270-71, 41 A.3d 1147 (2012).

Accordingly, General Statutes § 52-557n (a) (2) (B) provides municipalities with immunity from liability for the "negligent acts or omissions which require the exercise of judgment or discretion as an official function of the authority expressly or impliedly granted by law." During oral argument, the court clarified that neither party disputes that the conduct in question was discretionary, and not ministerial. As such, the plaintiff raises the identifiable person-imminent harm exception to qualified immunity.

C.

Identifiable Person

"[T]he identifiable person, imminent harm exception to qualified immunity for an employee's discretionary acts is applicable in an action brought under § 52–557n (a) [(2) (B)] to hold a municipality directly liable for those acts." *Grady* v. *Somers*, 294 Conn. 324, 332, 984 A.2d 684 (2009) (negligence action brought directly against municipality). The "exception applies when the circumstances make it apparent to the public officer that his or her failure to act would be likely to subject an identifiable person to imminent harm . . . . To fall within this exception to discretionary act immunity, a plaintiff must establish (1) an imminent harm; (2) an identifiable victim; and (3) a public official to whom it is apparent that his or her conduct is likely to subject that victim to that harm. . . . All three must be proven in order for the exception to apply." (Citation omitted; internal quotation marks omitted.) *Doe* v. *New Haven*, 214 Conn. App. 553, 579-80, 281 A.3d 480 (2022).

The defendant first argues that there is no genuine issue of material fact that the exception does not apply because the plaintiff was not an identifiable individual. "The identifiable person-imminent harm exception applies to narrowly defined classes of foreseeable victims as well as identifiable individuals. . . . An individual may be 'identifiable' for purposes of the exception to qualified governmental immunity if the harm occurs within a limited temporal and geographical zone, involving a temporary condition."[1] (Citations omitted; internal

[1]The plaintiff's complaint only argues that he "was an identifiable person subject to imminent harm" and not that he was a member of a class of foreseeable victims. Docket Entry No. 110, p. 2. Accordingly, the court need not address whether the plaintiff was a member of a class of foreseeable victims.

quotation marks omitted.) *Ahern* v. *Board of Education*, 219 Conn. App. 404, 415 n.9, 295 A.3d 496 (2023).

"Generally, we have held that a party is an identifiable person when he or she is compelled to be somewhere. . . . Outside of the schoolchildren context, we have recognized an identifiable person under this exception in only one case that has since been limited to its facts. Beyond that, although we have addressed claims that a plaintiff is an identifiable person . . . in a number of cases, we have not broadened our definition. See, e.g., *Cotto* v. *Board of Education*, [294 Conn. 265, 267-68, 279, 984 A.2d 58 (2009)] (director of community based summer youth program located in public school was not identifiable person when he slipped in wet bathroom because 'then so was every participant and supervisor in the Latino Youth program who used the bathroom,' and anyone 'could have slipped at *any* time' [emphasis in original]); see also . . . *Grady* v. *Somers*, [supra, 294 Conn. 328, 355-56] (permit holder injured at refuse transfer station owned by town did not qualify as identifiable person despite being paid permit holder and resident of town) . . . ." (Citations omitted; footnotes omitted.) *St. Pierre* v. *Plainfield*, 326 Conn. 420, 436-38, 165 A.3d 148 (2017).

Although application of this exception to an individual identifiable person is rare, this court has recently recognized that "under our present Supreme and Appellate Court precedent . . . compulsion is required in order for a plaintiff to be classified as an identifiable individual for purposes of this exception to governmental immunity." *Marcano* v. *Vendetto*, Superior Court, judicial district of New Haven, Docket No. CV-19-6096427-S (August 2, 2023, *Wilson, J.*). "Compulsion, as defined by our Appellate Courts, means that the identifiable individual is legally required to be at the location where the injury occurred." Id. This court's reasoning was based on the well-established principle in our appellate case law "that whether the plaintiff was

compelled to be at the location where the injury occurred remains a paramount consideration in determining whether the plaintiff was an identifiable person . . . ." [2] (Internal quotation marks omitted.) Id., quoting *Strycharz* v. *Cady*, 323 Conn. 548, 575-76, 148 A.3d 1011 (2016).

There is no question that the plaintiff was compelled to be at NHPD headquarters - where his injuries allegedly occurred - as following his arrest and at all times relevant to his negligence claim, he was legally in the NHPD's custody. In addition, the plaintiff's harm is alleged to have occurred within a "limited temporal and geographic zone" - NHPD headquarters subsequent to his arrest - and to have involved a "temporary condition" - being improperly handcuffed. (Internal quotation marks omitted.) *Ahern* v. *Board of Education*, supra, 219 Conn. App. 415 n.9. Thus, even though our appellate case law has stressed that application of the identifiable person-imminent harm exception to an individual identifiable person is rare, the fact that the plaintiff is clearly able to satisfy the baseline factors necessary to show that he was an identifiable person, along with the compulsion requirement, which is the "paramount consideration in determining whether the plaintiff was an identifiable person," raises a genuine issue of material fact regarding whether the exception does not apply because the plaintiff was an identifiable individual. (Internal quotation marks omitted.) *Strycharz* v. *Cady*, supra, 323 Conn 576; see also *Tryon* v. *North Branford*, 58 Conn. App. 702, 755 A.2d 317 (2000) (affirming trial court's holding that woman bitten by dog owned by volunteer firefighter at staging area of firefighter's parade, was an identifiable person for purposes of summary judgment).

[2]The court notes, however, that the "compulsion requirement . . . is not without contention: At least three members of our Supreme Court recently have observed that the court's application of the identifiable person-imminent harm exception, particularly with respect to the identifiable person prong of the exception, may be doctrinally flawed, unduly restrictive, and/or ripe for revisiting in an appropriate future case." (Internal quotation marks omitted.) *Marcano* v. *Vendetto*, supra, Superior Court, Docket No. CV-19-6096427-S.

D.

Imminent Harm

The defendant next argues that there is no genuine issue of material fact that the exception does not apply because the plaintiff was not subjected to an imminent harm sufficient to invoke the exception. "For the harm to be deemed imminent, the potential for harm must be sufficiently immediate. In fact, the criteria of identifiable person and imminent harm must be evaluated with reference to each other. An allegedly identifiable person must be identifiable as a potential victim of a specific imminent harm. Likewise, the alleged imminent harm must be imminent in terms of its impact on a specific identifiable person. . . . Indeed, we have found imminent harm only in the clearest cases." (Citations omitted; internal quotation marks omitted.) *Cotto* v. *Board of Education*, supra, 294 Conn. 275-76.

"In *Williams* v. *Housing Authority*, [159 Conn. App. 679, 705-706, 124 A.3d 537 (2015), aff'd, 327 Conn. 338, 174 A.3d 137 (2017)], this court construed [*Haynes* v. *Middletown*, 314 Conn. 303, 101 A.3d 249 (2014)], as setting forth the following four part test with respect to imminent harm. First, the dangerous condition alleged by the plaintiff must be apparent to the municipal defendant. . . . We interpret this to mean that the dangerous condition must not be latent or otherwise undiscoverable by a reasonably objective person in the position and with the knowledge of the defendant. Second, the alleged dangerous condition must be likely to have caused the harm suffered by the plaintiff. A dangerous condition that is unrelated to the cause of the harm is insufficient to satisfy the *Haynes* test. Third, the likelihood of the harm must be sufficient to place upon the municipal defendant a clear and unequivocal duty . . . to alleviate the dangerous condition. The court in *Haynes* tied the duty to prevent the harm to the likelihood that the dangerous condition would cause harm . . . . Thus, we consider a clear and unequivocal duty .

. . to be one that arises when the probability that harm will occur from the dangerous condition is high enough to necessitate that the defendant act to alleviate the defect. Finally, the probability that harm will occur must be so high as to require the defendant to act immediately to prevent the harm." (Internal quotation marks omitted.) *Ahern* v. *Board of Education*, supra, 219 Conn. App. 423-24.

The first prong is apparentness. In determining whether the dangerous condition alleged by the plaintiff would have been apparent to the municipal defendant, the court applies an "objective" test that asks not if "the government agent actually knew that harm was imminent but, rather, whether the circumstances would have made it apparent to a reasonable government agent that harm was imminent." *Edgerton* v. *Clinton*, 311 Conn. 217, 231 n.14, 86 A.3d 437 (2014). Here, the video submitted into evidence by the plaintiff demonstrates that he complained about the tightness of his handcuffs to an officer when his property was being inventoried and processed by police. Following the plaintiff's complaint, the officer checked his handcuffs, and stated that he did not believe anything was wrong with the way the handcuffs were secured. Several minutes later, an altercation broke out between the plaintiff and the officers after the plaintiff asked a number of questions relating to his signing of the property form, resulting in the plaintiff being taken from the processing area to a holding cell. In the holding cell, officers took off the plaintiff's handcuffs so that they could be reapplied to cuff his hands behind his body. During this, the plaintiff made statements to the effect of "look at what you are doing to my hands" and also asked the officers to let him maneuver his hands in a certain way while they were reapplying the handcuffs; however, at no point while being taken to the cell or while in the cell, did the plaintiff explicitly complain that the handcuffs were too tight or that they were hurting his wrists.

Given that when the plaintiff complained about the tightness of the handcuffs an officer inspected them closely, moved them up and down the plaintiff's wrist and then stated, "they move pretty freely, so I don't understand how they're tight," the evidence does not suggest that "the circumstances would have made it apparent to a reasonable government agent that harm was imminent" in that moment. *Edgerton* v. *Clinton*, supra, 311 Conn. 231 n.14. Indeed, after the officer's inspection, he reasonably may have believed that the handcuffs did not present any imminent harm whatsoever based on his ability to move the handcuffs freely. Further, because the video reveals that the plaintiff did not explicitly complain about the tightness of the handcuffs at any point after that, there is no indication in the record that the imminent harm complained of by the plaintiff would have been apparent to any of the officers who were involved with taking him to the cell and subsequently reapplying his handcuffs. Accordingly, the record demonstrates the absence of any genuine issue of material fact regarding whether it was apparent to the defendant that harm was imminent.

The second prong is causation. The plaintiff has alleged that he received medical treatment for injuries sustained as a result of the improper handcuffing which "may be permanent in nature . . . ." Docket Entry No. 110, p. 3; Deposition of Tony Webb, pp. 40-41. But the plaintiff has not introduced any evidence substantiating this claim or even demonstrating that he incurred any injury at all as a result of this incident. The plaintiff's submissions are devoid of any medical documentation, although at his deposition he testified that he did receive medical treatment relating to the injury. Furthermore, the plaintiff's deposition testimony reveals a lack of clarity about exactly what conduct he is alleging caused his injury - the failure of police to double lock the handcuffs or the twisting of his wrists while he was being handcuffed in the cell. See Deposition of Tony Webb, p. 41 ("what led to me sustaining the injury is how [the two

officers that were in the detention cell] were twisting my wrists"). Thus, there is no genuine issue of material fact regarding causation because nothing in the summary judgment record tends to demonstrate that the injury complained of by the plaintiff was related to or caused by the defendant's conduct.

The third prong is likelihood of imminent harm. Our case law's "interpretation of imminent harm" is "not focused on the duration of the alleged dangerous condition, but on the magnitude of the risk that the condition created." (Internal quotation marks omitted.) *Washburne* v. *Madison*, supra, 175 Conn. App. 629. Under this interpretation, "a harm is not imminent if it could have occurred at any future time or not at all" and risk is "specifically associated . . . with the *probability* that harm would occur, not the foreseeability of the harm." (Emphasis in original; internal quotation marks omitted.) Id. Thus, in determining whether the likelihood of a harm is sufficient to invoke a clear and unequivocal duty on the part of a defendant, our appellate courts have often scrutinized how often the conduct at issue leads to the harm complained of. See, e.g., *Martinez* v. *New Haven*, 328 Conn. 1, 11-12 176 A.3d 531 (2018) ("[T]he plaintiff failed to satisfy the imminent harm prong of the exception" where "the defendants had not experienced any problems with student behavior in the auditorium. Thus, the defendants had no reasonable way to anticipate that a student would be cut in the course of attempting to pick up safety scissors in the auditorium at the same time as another student."); *Ahern* v. *Board of Education*, supra, 219 Conn. App. 427-28 ("The plaintiff presented evidence that there had been several failed stunt attempts before she fell and hit her head, but there was no evidence that tended to demonstrate that she had been injured in any of these previous attempts. . . . Therefore, the plaintiff's previous failed attempts of the stunt, in which she had neither fallen forward nor had fallen and hit her head, did not establish a genuine issue of material fact as to whether it was

likely that, by continuing to practice the stunt, the plaintiff would be subject to the imminent and apparent harm of not being properly caught or hitting her head."); *Maselli* v. *Regional School District No. 10*, 198 Conn. App. 643, 658-59, 235 A.3d 599 (no imminent harm because getting hit in face by ball while playing soccer is "not so uncommon of a risk" that would have invoked clear and unequivocal duty on part of school employees to contact student's parents), cert. denied, 335 Conn. 947, 238 A.3d 19 (2020); *Washburne* v. *Madison*, supra, 175 Conn. App. 630-31 (noting that "[t]he plaintiff presented no evidence that . . . the defendants were aware that an injury similar to the one suffered . . . was so likely to happen that they should have acted to prevent it" in affirming summary judgment where the plaintiff raised identifiable person-imminent harm exception).

The undisputed facts, viewed in the light most favorable to the plaintiff, do not tend to establish a genuine issue of material fact regarding the likelihood of imminent harm prong. The only way such a genuine issue could exist, is if a reasonable fact finder could determine that the way the officers handcuffed the plaintiff, taken together with his complaints, created such a high probability of harm that the officers had a clear and unequivocal duty to act. As previously discussed, our case law ties this prong to the probability that a given harm will occur. The plaintiff has not presented any evidence demonstrating that where a handcuffed person complains about tight handcuffs, there is a high magnitude of risk that an injury will occur. More importantly, the plaintiff has not presented any evidence that these NHPD officers, in particular, were aware that complaints about tight handcuffs create "so uncommon of a risk" in such a context. See *Maselli* v. *Regional School District No. 10*, supra, 198 Conn. App. 658-59 (getting hit in the head with a soccer ball while playing soccer does not present imminent harm because it is not an uncommon risk in context of playing soccer); see also *Boyette* v. *Waterbury*, Superior

Court, judicial district of Waterbury, Docket No. CV-17-6035123-S (March 28, 2022, *Roraback, J.*) (no imminent harm in context of police pursuit because "no evidence has been adduced to show that the officer *knew* that the BMW would drive through the red light" [emphasis added]). The fact that the video shows an officer moving the handcuffs up and down the plaintiff's wrists with ease, indicates to the court that there is no evidence that the officer knew a high magnitude of risk was present.

Additionally, determining that a genuine issue of material fact exists here regarding the likelihood of harm would be inconsistent with the principle that "a harm is not imminent if it could have occurred at any future time or not at all"; (internal quotation marks omitted) *Washburne* v. *Madison*, supra, 175 Conn. App. 629; because here, the dangerous condition complained of did not harm the plaintiff when it first arose - when he was handcuffed for the second time after removing his clothes in the processing area - rather, the plaintiff testified that the harm occurred only after the handcuffs were removed and reapplied for the third time by two other officers while the plaintiff was in a detention cell. See Deposition of Tony Webb, pp. 36-38 (clarifying that the plaintiff's wrist was injured "when the officers removed the handcuffs once [he] was in the cell" and that he was not injured by the officer in the processing area who handcuffed him after he removed his clothes but that the officer "didn't double-lock the cuffs").[3]

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[3]The plaintiff's deposition testimony elaborates on and contradicts certain allegations in the revised complaint. Importantly, at his deposition, the plaintiff testified that he took no issue with the handcuffing by the NHPD officers who arrested him. See Deposition of Tony Webb, pp. 24-25. He testified that when he watched the body camera video footage of himself being processed at NHPD headquarters following his arrest, he noted that an NHPD officer removed the handcuffs that were applied during his arrest so that he could take off his clothing, and then subsequently reapplied them. Id., 28. He further testified that after that NHPD officer reapplied the handcuffs, he noticed that they were not double-locked, and complained, but the handcuffs were not adjusted. Id., 29. The plaintiff then testified that he was escorted to a detention cell and that at some point, NHPD officers "rushed" the detention cell, threw him on the ground, and twisted his wrist in order to remove the handcuffs from one of his wrists, so that they could be

Thus, while the plaintiff's revised complaint alleges only one instance of improper handcuffing, his deposition testimony and the video establish that he was handcuffed three different times during the relevant chain of events, two of which were allegedly improper, but only one of which is actually alleged to have caused the harm.

Consequently, because the plaintiff's claim is that the dangerous condition was the failure to double lock the handcuffs; see id., 41 (the plaintiff answered "[c]orrect" in response to the question "that with respect to what you claim was improper about the handcuffing, you claim that the officers did not double-lock the handcuffs?"); the evidence in the record demonstrates that there is no genuine issue of material fact that this condition did not create a high probability of an imminent harm. This is evident because the first instance of failure to double-lock the handcuffs is not even alleged to have injured the plaintiff at all, and it was not until the second such instance of handcuffing in the holding cell that the harm is alleged to have occurred. Id., 36-38.

Given that "a harm is not imminent if it could have occurred at any future time or not at all," and that according to the chronology here, the dangerous condition complained of - handcuffs that were not double-locked - did not result in any injury at all at the time the condition is alleged to have first arose, the harm alleged by the plaintiff cannot be considered imminent because under the facts of this case, the harm allegedly caused by said condition could have occurred not at all. (Internal quotation marks omitted.) *Washburne* v. *Madison*, supra, 175 Conn. App. 629; see also *Boyette* v. *Waterbury*, supra, Superior Court, Docket No. CV-17-

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reapplied in order to cuff his hands behind his back. Id., 32. The plaintiff testified that it was after this third application of the handcuffs in the detention cell that he began to feel numbness in his fingers, and that he believed this instance of handcuffing was improper because the handcuffs were not double-locked when they were reapplied. Id., 32, 38, 41.

6035123-S ("the risk of specific harm was not sufficiently immediate given that the vehicle being pursued could have collided with any other vehicle that it was close to or collided with no vehicle at all"). This is true because according to the plaintiff's testimony, the officers failed to double-lock the handcuffs on two separate occasions, but despite the existence of this dangerous condition in the processing area, the handcuffs were removed and reapplied before he sustained an injury in the holding cell, meaning out of the two separate instances where he claims the dangerous condition of non-double-locked handcuffs was present, only one of those instances is actually alleged to have resulted in harm. Thus, under these facts, failure to double-lock handcuffs is not a dangerous condition that can give rise to an imminent harm, because the harm may not occur at all, as evidenced by the initial instance of allegedly improper handcuffing in the processing area, which technically ended without injury when the officers in the holding cell removed the handcuffs before reapplying them.

The final prong is probability. Under this prong, the likelihood of a harm must not simply be probable, but the probability must be "so high" that the defendant is obligated to act immediately. *Ahern* v. *Board of Education*, supra, 219 Conn. App. 423-24. As the court discussed under the likelihood of imminent harm prong, the plaintiff has not presented any evidence that the defendant's agents were aware that a high probability of injury was associated with complaints about tight handcuffs. Because there is no evidence in the record that could allow a reasonable fact finder to conclude that this probability was so high, there is no genuine issue of material fact regarding the probability prong. See *Evon* v. *Andrews*, 211 Conn. 501, 508, 559 A.2d 1131 (1989) ("[t]he adoption of a rule of liability where some kind of harm may happen to someone would cramp the exercise of official discretion beyond the limits desirable in our society" [internal quotation marks omitted]). Indeed, the video shows that while the plaintiff

was in the holding cell where he claims his injuries were sustained, he did not make any complaints at all about his wrist hurting, or the handcuffs being too tight.

"All four of these prongs must be met to satisfy the *Haynes* test . . . ." *Williams* v. *Housing Authority*, supra, 159 Conn. App. 706. Accordingly, because the summary judgment record, interpreted as favorably to the plaintiff as possible, does not provide any basis that would allow a reasonable fact finder to conclude that any of the four prongs of the *Haynes* test were satisfied, the defendant has demonstrated that there is no genuine issue of material fact that it is entitled to governmental immunity. Having determined that the defendant is entitled to governmental immunity, it is not necessary for the court to consider its alternative grounds for granting summary judgment.

III.

CONCLUSION

For the foregoing reasons, the motion for summary judgment is granted.

Juris No. 421279
Wilson, J.