

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA**

Kristy Dean and Werner O'Connell,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 3:10-CV-183 JVB
)	
City of South Bend,)	
The South Bend Police Department,)	
Officer Joshua Morgan, and the)	
Chief of Police of the South Bend Police,)	
)	
Defendants.)	

OPINION AND ORDER

Plaintiffs Kristy Dean and Werner O'Connell claim that Officer Joshua Morgan of the South Bend Police Department violated their Fourth Amendment right when he allegedly used excessive force and falsely arrested them at the Quality Inn hotel on October 24, 2008.

Plaintiffs brought this action against the City of South Bend, the South Bend Police Department, the South Bend Police Chief, and Officer Morgan individually and in his official capacity. Having reviewed the parties' briefs, and all accompanying materials, the Court grants summary judgment to Defendants on all claims.

A. Summary Judgment Standard

A party seeking summary judgment bears the initial responsibility of informing a court of the basis for its motion and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the

affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the moving party supports its motion for summary judgment with affidavits or other materials, it thereby shifts to the non-moving party the burden of showing that an issue of material fact exists. *Keri v. Bd. of Trust. of Purdue Univ.*, 458 F.3d 620, 628 (7th Cir. 2006).

B. Facts

1. Plaintiffs' version:

On October 23, 2008, Plaintiffs Kristy Dean and Werner O'Connell were staying at the Quality Inn in South Bend, Indiana. (Dep. of O'Connell at 15). Plaintiffs had their English Bulldog with them at the hotel. (*Id.* at 17). The dog weighs between 30 and 50 pounds. (*Id.*). While staying at the Quality Inn, Plaintiffs experienced issues with noise, not being able to connect to the internet, and having no towels in their room. (*Id.* at 19–20). O'Connell went to the front desk to complain about these issues. (*Id.* at 20).

Later that afternoon, Officer Joshua Morgan knocked on the Plaintiffs' hotel room door. (Dep. of Dean at 9). Dean answered the door and was asked by Officer Morgan if he could speak with O'Connell. (*Id.*). O'Connell came to the door, which was cracked open, and used his knee to keep the dog from leaving the room. (Dep. of O'Connell at 25).

Plaintiffs claim that Officer Morgan grabbed O'Connell by the throat and pulled him out of the room. (Dep. of O'Connell at 26–27, Dep. of Dean at 10). At this time Plaintiffs' dog escaped into the hallway. Plaintiffs claim that Officer Morgan walked after the dog down the hallway while they pleaded with him not to shoot the dog. (Dep.

of O'Connell at 27). O'Connell then grabbed the dog and put it back in the room. (*Id.* at 29). Officer Morgan then handcuffed him and stood on his spine. (*Id.* at 29).

Dean claims that, without any assistance from Officer Morgan, she got down to her knees and put her hands behind her head. (Dep. of Dean at 11). Dean claims that Officer Morgan hit her in head, threw her against the wall "eight or nine times," and bashed her head against the wall. (*Id.* at 14, 15). Furthermore, Dean claims that she went unconscious while being handcuffed by Officer Morgan. (*Id.* at 15).

2. Defendants' version:

On October 24, 2008, at about 1:25 p.m., Officer Morgan responded to a dispatch at the Quality Inn in South Bend, Indiana. (Morgan Aff. ¶ 3). The dispatch was regarding a man who was "belligerent and cussing" in the hotel lobby. (*Id.* at ¶ 4). Upon arriving, Officer Morgan spoke with an employee at the hotel who informed him that O'Connell was the belligerent individual. (*Id.* at ¶ 5). The employee also told Officer Morgan that O'Connell threatened her saying that he had a dog in his room that would "tear her to shreds." (*Id.*). Officer Morgan then went to O'Connell's hotel room. (Morgan Aff. ¶ 6).

While walking down the hallway to Plaintiffs' room, Officer Morgan smelled marijuana. (Morgan Aff. ¶ 7). When Officer Morgan knocked on the door, O'Connell and Dean opened it slightly. (*Id.* at 8). O'Connell stated that he was upset because some unknown person accused him of smoking marijuana. (*Id.* at 9). Officer Morgan claims that O'Connell became upset with him, and that he told him that he had a dog that was "trained to attack and was very vicious." (*Id.* at 10, 11).

While they were speaking, the dog ran out of the room at Officer Morgan, and he un-holstered his firearm and pointed it at the dog. (Morgan Aff. ¶ 14). O’Connell grabbed the dog and put it back in the room before it got to Officer Morgan. (*Id.*). Officer Morgan felt like he was in “imminent danger of being attacked by an aggressive dog.” (*Id.* at 15). O’Connell approached him and told him to stop pointing his weapon at the dog. (*Id.* at 16). In response, Officer Morgan told O’Connell to keep his dog under control. (*Id.* at 17). However, O’Connell continued to approach Officer Morgan while his gun was drawn. (*Id.*).

At that point, Officer Morgan extended his arm and grabbed O’Connell by the shirt to keep him from getting any closer. (Morgan Aff. ¶ 18). Dean then grabbed Officer Morgan’s arm and told him to let go of O’Connell. (*Id.* at 19). Officer Morgan told both Plaintiffs to turn around and put their hands behind their backs, but neither of them followed his instruction. (*Id.* at 20). While Officer Morgan was attempting to handcuff O’Connell, Dean stated that she was going back in the hotel room. (*Id.* at 21). Officer Morgan let go of O’Connell, and grabbed Dean. (*Id.* at 22). Dean pulled away from Officer Morgan, and he proceeded to spin her around, causing her to fall to the ground. (*Id.* at 23).

Again, Plaintiffs’ dog came running out of the room at Officer Morgan. (Morgan Aff. ¶ 24). He released hold on Dean and un-holstered his weapon “in preparation for the dog’s attack.” (*Id.*). However, Dean grabbed the dog before it could get to Officer Morgan. (*Id.*). Officer Morgan felt as though he was in imminent danger because of the dog. (*Id.*).

At that point, Officer Morgan experienced no more resistance from Plaintiffs, and placed both of them under arrest for disorderly conduct and resisting arrest. (Morgan Aff. ¶ 26).

3. Hotel Surveillance Video:

The hotel surveillance video contradicts several of Plaintiffs' allegations and confirms Officer Morgan's account. First, Officer Morgan did not pull O'Connell out of the room by the throat. (Hotel Surveillance Video dated October 24, 2008). Instead, Plaintiffs' dog ran out of the hotel room directly towards Officer Morgan, as asserted by Officer Morgan in his affidavit. (*Id.*). Officer Morgan pulled out his weapon and pointed it at the dog, and O'Connell grabbed the dog before it reached Officer Morgan. (*Id.*) Furthermore, O'Connell was moving towards Officer Morgan when Officer Morgan grabbed Plaintiff by the shirt. (*Id.*). This happened while Officer Morgan's gun was still drawn and pointed at the dog. (*Id.*).

As Officer Morgan held O'Connell by the shirt, Dean grabbed Officer Morgan's arm. (*Id.*). At that time, Officer Morgan put O'Connell's hands behind his back and attempted to handcuff him. (*Id.*). Dean began to walk back towards the hotel room. Officer Morgan released O'Connell and grabbed her. (*Id.*). Dean resisted Officer Morgan, and Officer Morgan ultimately forced her to the ground. (*Id.*). Before going to the ground, Dean hit the hotel hallway walls twice as she was spun around. (*Id.*). Dean did not pass out but instead immediately stood up. (*Id.*)

Again, Plaintiffs' dog ran out of the room directly towards Officer Morgan. (*Id.*). Officer Morgan released Dean and drew his gun. (*Id.*). He pointed his gun at the dog, but

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