

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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WILLIE WILLIAMS,

Plaintiff,

v.

SGT. EVERS, C.O. BAUSCH  
and UNIT MANAGER LINDA HODDY-TRIPP,

Defendants.  
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OPINION AND ORDER

01-C-0241-C

This civil action for money damages is before the court on the motion of defendants Sgt. Evers, C.O. Bausch and Linda Hoddy-Tripp for summary judgment and on plaintiff Willie Williams's motion for a preliminary injunction. Plaintiff is an inmate of the Supermax Correctional Institution in Boscobel, Wisconsin. He alleges that on the night of February 5, 2001, defendants Evers and Bausch escorted him from his cell to a holding cell, where they threw him to the ground while he was tethered to the door and pulled his body backward, causing him extreme pain and serious injuries to his wrists. He alleges that defendant Hoddy-Tripp was present during this assault and that she did not make any effort to stop it but instead directed the other two defendants to "slam" him to the floor.

Defendants have moved for summary judgment on the ground that defendant Hoddy-Tripp had no involvement with the incident and was not even aware that anything was happening to plaintiff, that the other defendants used only such force as was reasonably necessary to subdue plaintiff when he was threatening them with bodily harm and that even if they used more force than necessary, they are qualifiedly immune from any suit for money damages. I conclude from the undisputed facts that defendants have established their entitlement to summary judgment.

Plaintiff has moved for a preliminary injunction, alleging that defendant Evers is depriving him of food, opening his legal mail, torturing him psychologically by waking him during the night and disregarding the inmate complaints that plaintiff files. Plaintiff contends that these actions are preventing him from filing another lawsuit against defendants Evers and Bausch. Plaintiff does not specify the preliminary relief he is requesting but presumably he wants defendants to stop feeding him "segregation loaf," stop waking him during the night, grant his inmate complaints and stop opening his legal mail outside his presence. His motion will be denied for his failure to show that the actions of which he complains are interfering directly with his prosecution of this lawsuit. He is free to file another lawsuit raising claims arising out of the alleged wrongdoing of defendants but it is too late to expand the contours of this lawsuit, which was filed over a year ago.

In addition, plaintiff has filed two discovery related motions. The first is a motion

to compel defendants' counsel to produce the unredacted copy of incident report no. 631104 and observation log sheet no. 192747 for February 5, 2001 through February 7, 2001. This motion will be denied because the magistrate judge has ruled that defendants are under no obligation to produce the observation log and because they provided plaintiff an unredacted copy of the incident report in February 2002. Plaintiff's motion to use deposition testimony in court will be denied as moot.

Although plaintiff was given two opportunities to file proposed findings of fact in opposition to those filed by defendants and was instructed at length in the proper procedures for doing so, both by the court and by defendants, his filings did not comply with the court's procedures. He did not file any separate listing of proposed facts. Rather, he submitted many documents, some titled, some untitled. Some contain assertions of fact, some are labeled "motion" and others are labeled "affidavit." Repeatedly, he discusses incidents that are not at issue in this case, such as the loss of his property during the cell search that took place after the effort to subdue him that allegedly resulted in the application of unnecessary force.

Because it is evident that plaintiff is having trouble understanding the court's instructions and because he has submitted two affidavits that meet the requirements of 28 U.S.C. § 1762 and that would support relevant findings of fact had he proposed them, I will take into consideration the averments in those affidavits in determining whether plaintiff

has put defendants' proposed findings into dispute.

#### UNDISPUTED FACTS

Plaintiff Willie Williams is an inmate of Supermax Correctional Institution. At all relevant times, plaintiff was incarcerated at Supermax, defendant Linda Hoddy-Tripp was a Corrections Unit Supervisor, Sgt. Todd Evers was employed as a Correctional Officer 3 (second shift sergeant), and Correctional Officer Russell A. Bausch was a Correctional Officer B.

Defendant Hoddy-Tripp's responsibilities included the security, treatment and general living conditions of all inmates assigned to her unit. Her normal duty hours were 10:00 a.m. to 8:00 p.m. Defendant Evers's responsibilities included the security, custody, control and treatment of inmates. It was his responsibility to maintain security and control of inmates to insure inmate, staff and public protection; to search and screen personal belongings and living quarters of inmates for contraband; to supervise inmates; to look for behavioral or other problems of inmates for referral to appropriate staff; to interpret and apply institution regulations and procedures for inmates; to inspect inmate quarters for any violation of cleanliness of security standards; to report orally to supervisors, disciplinary committees, etc., regarding inmates and incidents; and to write conduct or incident reports.

Defendant Bausch was responsible for the security, custody, control and treatment

of inmates; supervision of inmates in a particular area or an assigned shift; security and control of inmates to insure inmate, staff and community protection; proper conduct of inmates while in all areas of the institution; escorting or overseeing movement of inmates; involvement in various program activities within the unit; subduing and restraining physically resistive inmates and transporting inmates to segregation as necessary; orienting new inmates to the institution; participating as a unit team member for assessment, problem resolution and program planning for inmates; searching and screening personal belongings and living quarters of inmates for contraband; writing conduct or incident reports for disciplinary committees; and appearing at disciplinary hearings.

Inmates of Supermax are prohibited from keeping eating utensils except during meals. Such utensils are considered contraband if kept between meals. On February 5, 2001, defendant Bausch picked up meal trays from inmates at their cell doors after dinner. When he picked up plaintiff's tray, plaintiff said to him, "You dumb motherfucker, you never got my spoon." Defendant Bausch asked plaintiff to return the spoon; plaintiff did not respond. Bausch interpreted the lack of response as an admission that plaintiff was keeping the spoon as contraband and he told plaintiff that his cell would be searched for contraband and that plaintiff would be strip searched pursuant to procedure. (When an inmate's cell is searched, the inmate is taken to another holding cell in preparation for a strip search.)

Defendant Bausch told defendant Evers that plaintiff had said he had kept a spoon

in his cell and that Bausch would be conducting both a cell search and a strip search. Bausch asked Evers for his assistance.

Defendants Bausch and Evers approached plaintiff's cell, with another officer. Plaintiff was agitated and belligerent and using profanity. He told defendant Bausch to "suck my dick, bitch" and called him a faggot.

Defendant Evers told plaintiff to come to the front of his cell to be restrained. Plaintiff complied. He was restrained with handcuffs, leg restraints and a tether on his right wrist, according to institution procedures. Defendants Evers and Bausch and a third correctional officer escorted plaintiff to a holding cell. As they walked, plaintiff jerked his head from one side to another in an aggressive manner, acted belligerent and directed profanity toward the officers. Defendants told him to face forward.

When they arrived at the holding cell, defendants Bausch and Evers tethered plaintiff to the holding cell door in preparation for the removal of his leg restraints. Defendants assisted plaintiff to his knees to permit the third officer to remove plaintiff's leg restraints. As the officer started to remove the restraints, plaintiff began to move his head and shoulders rapidly back and forth toward defendants Bausch and Evers. Although defendants directed him to look straight ahead, he ignored their orders and continued to resist.

Concerned about their own safety if plaintiff head butted them, spit on them or bit them, defendants Bausch and Evers forced plaintiff to the floor in an effort to take control

of him and of the situation. The third officer secured plaintiff's legs. The three held plaintiff on the floor until the Team One Responders arrived in response to an alert tone. At that point, plaintiff was asked whether he would cooperate; he said he would. Defendants Evers and Bausch helped plaintiff to his knees so that his leg restraints could be removed and placed him in the holding cell. Plaintiff made no complaint of injury or pain at the time.

Once plaintiff was secured in the holding cell, the third officer left to attend to other duties. Defendants Bausch and Evers attempted to conduct a strip search of plaintiff but he refused to cooperate, making it necessary to conduct a staff assisted search. The entire search took approximately 20 minutes. When it was finished, plaintiff was placed in restraints and escorted to another cell, where he asked for and received medical treatment.

Defendants Evers and Bausch and Officer Johnson prepared reports on the incident.

Defendant Evers injured his leg in the course of escorting, subduing and searching plaintiff and was told by his supervisor to seek medical attention. Plaintiff's Health Service Unit progress notes, dated 2/5/01, approximately 2030 hours, state that plaintiff had slight swelling and slight lacerations 1/8 of an inch long in the inner wrist base of both his right and left thumb areas, with no bleeding noted, and that he had full range of motion in both wrists and in his fingers.

On February 5, 2001, defendant Hoddy-Tripp was performing her usual duties in Charlie Unit, in the area of the sergeant's station when she saw a two-officer escort of an

inmate coming around the corner of Range One.

## OPINION

The parties dispute whether defendant Hoddy-Tripp was present while plaintiff was escorted to a holding cell and then forced to the floor by defendants Evers and Bausch, whether she told the other defendants to slam plaintiff to the floor, and whether Officer Johnson participated in plaintiff's escort but these disputes are immaterial. Even if defendant Hoddy-Tripp were present and even if she told the other defendants to slam plaintiff, any liability she has to plaintiff would be derivative of Evers's and Bausch's. If they acted improperly at her direction, she would be liable to plaintiff. As for Officer Johnson, he is not accused of doing anything improper; therefore, it makes no difference whether he was present or not.

In an affidavit sworn to on September 25, 2001, and docketed as dkt. #66, plaintiff avers that when defendants Evers and Bausch took him from his cell, Bausch asked Evers (in code words) whether he wanted to slam plaintiff there, that Evers said to wait until they got around the corner out of the view of other inmates and that both defendants twisted plaintiff's hands and wrists "to an unbearable painful point." Plaintiff avers that when they reached the strip cell, he was ordered to kneel after being cuffed to a 6 foot tall metal door with a bull strap attached to his right wrist, that after defendant Hoddy-Tripp told the other



defendants to slam him to the floor, he was brought to the floor “with a force that so painful that [he] felt that [his wrist] had been broken” and that both officers kept their knees in his back until the responder team arrived.

Plaintiff has never denied, much less put into dispute, that he swore at the escorting officers or that he moved his head rapidly from side to side and otherwise tried to resist the officers both while being escorted and after being tethered to the holding cell door for removal of his leg restraints. Such conduct would require a forceful response to prevent injury to the escorting officers and to plaintiff himself. It is undisputed that defendants Evers and Bausch forced plaintiff to the floor from his kneeling position. Plaintiff characterizes it as a “slam” that made him fear that his wrist had been broken; in light of the fact that he suffered no actual injuries of any significance, it is unlikely that defendants Evers and Bausch knocked him to the floor without making any effort to break his fall. Even assuming that this is what happened, I cannot say that it was objectively unreasonable for defendants Evers and Bausch to take such an action in response to plaintiff’s efforts to resist them. Plaintiff was belligerent and out of control. Despite being in handcuffs, leg restraints and tethered to the door of the holding cell, he was still trying to attack defendants. For defendants to take him to the ground completely so as to gain control of him would have been a reasonable response to his conduct. That they were able to subdue him without causing him any more injury than slight swelling and very minor lacerations on his wrist suggests that they used no more force than

necessary under the circumstances. Hudson v. McMillian, 503 U.S. 1, 7 (1992) (absence of serious injury is relevant to Eighth Amendment inquiry, although it does not end it). Looking at defendants' actions in the light of the circumstances in which they acted, no reasonable jury could find that defendants had used more force than was necessary under the existing circumstances.

With this conclusion, it is unnecessary to determine whether they were qualifiedly immune from monetary damages for their actions. Saucier v. Katz, 112 S. Ct. 2151, 2156 (2001) (initial inquiry in qualified immunity determination is whether constitutional right has been violated; if there is none, "there is no necessity for further inquires concerning qualified immunity").

#### ORDER

IT IS ORDERED that the motion for summary judgment of defendants Sgt. Evers, C.O. Bausch and Linda Tripp-Hoddy is GRANTED; plaintiff Willie Williams's motion for a preliminary injunction is DENIED; plaintiff's motion to compel production of documents

is DENIED; and plaintiff's motion to use depositions in court is DENIED as moot.

Entered this 10th day of June, 2002.

BY THE COURT:

BARBARA B. CRABB  
District Judge