

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

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CHARLES WILLIAM HOOPER,

Plaintiff,

v.

CAPTAIN GARY PEDERSON, DEPUTY SAUNBURG,  
DEPUTY FAVE, DEPUTY TOLE  
and DEPUTY COOK,

Defendants.

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OPINION and ORDER

11-cv-571-slc

Plaintiff, Charles William Hooper, brings this proposed civil action against defendants Captain Gary Pederson, Deputy Saunburg, Deputy Fave, Deputy Tole and Deputy Cook. He is proceeding *pro se* and has been allowed to proceed without prepayment of costs and fees in this action.

The next step is determining whether Hooper's proposed action is (1) frivolous or malicious, (2) fails to state a claim on which relief may be granted, or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Because Hooper meets this hurdle, he will be allowed to proceed against defendants.

ALLEGATIONS OF FACT

In addressing any pro se litigant's complaint, the court must read the allegations to the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of this screening order, the court assumes facts alleged in the complaint.

- Hooper alleges that on July 13, 2011, when he was incarcerated in the Juneau County Jail, Captain Pederson asked him to remove his mattress.

- When he did not, Captain Pederson called for backup and placed his hands around Hooper's throat, choking him.
- Hooper was forced down on his bunk when Deputy Cook punched him in the face.
- After he stood up, Deputy Tole put him in a headlock and shoved his head against the wall repeatedly.
- After Hooper placed his hands behind his back, Deputy Saunburg placed her knees in his back roughly while Deputy Fave placed his knees on Hooper's neck.

## OPINION

Hooper claims that the defendants violated his Eighth Amendment rights when they used excessive force and injured him. In the context of prison, excessive force claims arise under the Eighth Amendment. *Whitley v. Albers*, 475 U.S. 312 (1986) and *Hudson v. McMillian*, 503 U.S. 1 (1992). The Eighth Amendment prohibits conditions of commitment that involve the wanton and unnecessary infliction of pain. *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). Because prison officials must sometimes to use force to maintain order, the central inquiry for a court faced with an excessive force claim, is whether the force “was applied in a good faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” *Hudson*, 503 U.S. at 6-7.

To determine whether force was used appropriately, the court considers special allegations revealing the safety threat perceived by the officers and the need for the application of force, the relationship between that need and the force used, the extent of the injury inflicted, and the

efforts of the officers to mitigate the severity of the force. *Whitley*, 475 U.S. at 321; *Outlaw v. Newkirk*, 259 F.3d, 833, 837 (7<sup>th</sup> Cir. 2001).

In *Hudson*, 503 U.S. at 9-10, the court explained that while the extent of injury inflicted was one factor to be considered, the absence of a significant injury did not bar a claim for excessive force so long as the officers used a more than normally necessary amount of force.

Here, Hooper alleges defendants used unnecessary force causing him injury. At this early stage of the proceedings, Hooper's allegations are sufficient to state a claim of excessive force under the Eighth Amendment against the defendants. Hooper should be aware, however that to be successful in this claim, he will have to prove the defendants choked and punched him maliciously and sadistically to cause him harm, and not merely negligently nor even an ill-conceived intentional effort to maintain discipline.

## ORDER

IT IS ORDERED that:

1. Plaintiff Charles William Hooper's request to proceed on his excessive force claim against the defendants Captain Gary Pederson, Deputy Saunburg, Deputy Fave, Deputy Tole, Deputy Cook is GRANTED.
2. For the time being, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any document submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants' attorney.
3. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

4. Plaintiff is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). This court will notify the warden at his institution of that institution's obligation to deduct payments until the filing fee has been paid in full.
5. The summons and complaint are being delivered to the United States Marshal for service on the defendants.

Entered this 2<sup>nd</sup> day of September, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge