

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

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MUSTAFA-EL K.A. AJALA,  
formerly known as DENNIS E. JONES-EL,

Plaintiff,

v.

CRAIG TOM and MATTHEW SCULLION,<sup>1</sup>

Defendants.  
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ORDER

13-cv-102-bbc

In accordance with Fed. R. Civ. P. 20 and 21 and the court's inherent authority, all of plaintiff Mustafa-El K.A. Ajala's claims have been severed from this case with the exception of his claim that defendants Craig Tom and Matthew Scullion used excessive force against plaintiff in the context of transferring him from the Green Bay Correctional Institution to the Wisconsin Secure Program Facility in 2007. This claim is now ready for screening under 28 U.S.C. §§ 1915 and 1915A, which require me to determine whether plaintiff's allegations state a claim upon which relief may be granted.

In determining whether an officer has used excessive force against a prisoner in violation of the Eighth Amendment, the question is "whether force was applied in a good

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<sup>1</sup> In the order severing the case, I failed to dismiss Rick Raemisch, who is not related to the remaining claim in this case. I have corrected that oversight in this order.

faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.” Whitley v. Albers, 475 U.S. 312, 320 (1986). The factors relevant to making this determination include:

- ▶ the need for the application of force
- ▶ the relationship between the need and the amount of force that was used
- ▶ the extent of injury inflicted
- ▶ the extent of the threat to the safety of staff and inmates, as reasonably perceived

by the responsible officials on the basis of the facts known to them

- ▶ any efforts made to temper the severity of a forceful response

Id. at 321. In Hudson v. McMillan, 503 U.S. 1, 9-10 (1992), the Court refined this standard, explaining that the extent of injury inflicted was one factor to be considered, but the absence of a significant injury did not bar a claim for excessive force so long as the officers used more than a minimal amount of force. Similarly, the Court of Appeals for the Seventh Circuit has cautioned district courts not to dismiss claims simply because the defendant used a small amount of force; rather, the court must consider all of the relevant factors. Washington v. Hively, 695 F.3d, 641, 642 (7th Cir. 2012).

In this case, plaintiff’s claim arises out of allegations that defendants placed handcuffs on plaintiff so tightly for a period of four hours that it caused swelling, bruising, numbness, pain and a pinched nerve from which he still suffers. Even when plaintiff complained to defendants that the handcuffs were too tight and causing him pain, defendants refused to do anything, telling plaintiff that he would “just have to endure it.” From these allegations,

it is reasonable to infer at this stage that defendants refused to loosen plaintiff's handcuffs for no reason other than to cause plaintiff harm. Accordingly, I will allow him to proceed on this claim. At summary judgment or trial, it will be plaintiff's burden to come forward with specific evidence from which a reasonable jury could find that defendants violated the standard articulated in Whitley.

Plaintiff makes a general allegation throughout his complaint that prison officials discriminate against African American prisoners, but he does not tie that allegation to anything that defendants did in this claim, so I do not understand plaintiff to be raising a separate claim of race discrimination in this case. To the extent that he is, he has failed to state a claim upon which relief may be granted because he has not include any allegations of race discrimination in the context of the use of force or identified any reason to believe that defendants in particular were motivated by racial animus.

## ORDER

IT IS ORDERED that

1. Plaintiff Mustafa-El K.A. Ajala is GRANTED leave to proceed on his claim that defendants Craig Tom and Matthew Scullion used excessive force against plaintiff in the context of transferring him from the Green Bay Correctional Institution to the Wisconsin Secure Program Facility in 2007.
2. Defendant Rick Raemisch is DISMISSED from the case.
3. For the time being, plaintiff must send defendants a copy of every paper or

document that he files with the court. Once plaintiff learns the name of the lawyer who will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendants or to defendants' attorney.

4. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of his documents.

5. Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on defendants. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for defendants.

6. 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). The clerk of court is directed to send a letter to the warden of plaintiff's institution informing the warden of the obligation under Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust

fund account until the filing fee has been paid in full.

Entered this 1st day of August, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge