

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

TIMOTHY COLEMAN,

Plaintiff,

v.

DANE COUNTY SHERIFFS, DEPUTY FOLTMAN,
DEPUTY TILLSON and DEPUTY HAWLEY,¹

Defendants.

OPINION and ORDER

13-cv-565-bbc

In this proposed civil action under 42 U.S.C. § 1983, plaintiff Timothy Coleman, who was a prisoner at the Dane County jail at the time he filed this complaint (he has since been transferred to the Dodge Correctional Institution), alleges that defendants Foltman, Tillson and Hawley used excessive force against him. Plaintiff seeks leave to proceed in forma pauperis under 28 U.S.C. § 1915 and has made an initial partial payment as directed by the court under § 1915(b)(1).

Because plaintiff is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny leave to proceed if his complaint is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who

¹ Although plaintiff refers to a “Deputy Tillsman” as a defendant in his complaint, he has provided another filing, dkt. #7, in which he states that “Tillson” is the proper spelling of the defendant’s name. Also in this second filing, plaintiff amends defendant “Dane County Sheriff” to “Dane County Sheriffs.”

by law cannot be sued for money damages. 28 U.S.C. § 1915(e). However, plaintiff is also a pro se litigant, which means his complaint will be construed liberally as it is reviewed for these potential defects. Haines v. Kerner, 404 U.S. 519, 521 (1972). Having reviewed the proposed complaint, I conclude that he may proceed on excessive force claims against defendants Foltman, Tillson and Hawley.

Plaintiff alleges the following facts in his complaint.

ALLEGATIONS OF FACT

Plaintiff Timothy Coleman was a prisoner at the Dane County jail. On August 5, 2013, he was in a segregation cell. Plaintiff was given medicine for his eyes but could not apply it because he did not have a working mirror. Plaintiff asked a nurse to help him but she declined.

Defendants Foltman, Tillson and Hawley came over because plaintiff was still holding his medication. The nurse came back and said that she would help him. Defendants then handcuffed plaintiff to the door. Hawley slammed plaintiff into the door. The deputies removed everything from plaintiff's cell and "locked [plaintiff] back down." When plaintiff asked for his medicine, he was yanked toward the trap and pepper spray was sprayed directly into his eyes. Plaintiff was already restrained so there was no reason for him to be sprayed.

OPINION

I understand plaintiff to be attempting to bring excessive force claims against the

defendant deputies. As an initial matter, it is not clear whether plaintiff's claim is properly construed as arising under the Eighth Amendment or the Fourteenth Amendment. Although generally excessive force claims in the prison setting involve the Eighth Amendment, if plaintiff was a pretrial detainee at the time of the incident, his excessive force claim arises under the Fourteenth Amendment's due process guarantee rather than the Eighth Amendment. Graham v. Connor, 490 U.S. 386, 395 n.10 (1989); Dorsey v. St. Joseph County Jail Officials, 98 F.3d 1527, 1528 (7th Cir. 1996). Nevertheless, because the standards governing excessive force claims under the Fourteenth and Eighth Amendments are roughly the same, Wilson v. Williams, 83 F.3d 870, 875 (7th Cir. 1996), the distinction is a close one.

In determining whether an officer has used excessive force against a prisoner under the Eighth Amendment, the question is “whether force was applied in a good 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. Under the Fourteenth Amendment, the question is whether defendant's actions amount to “a deliberate act intended to chastise or deter” or at least “reckless disregard for [plaintiff's] rights.” Wilson, 83 F.3d at 875 (citations omitted).

In this case, plaintiff alleges that defendants slammed him against the door of his cell, yanked him toward the trap and pepper sprayed him for no reason, given that he was already restrained. Assuming as I must that these allegations are true, I conclude that he states excessive force claims under either the Eighth Amendment or Fourteenth Amendment standards. Accordingly, I will allow plaintiff to proceed on his excessive force claims against the three named deputy defendants.

Plaintiff also names “Dane County Sheriffs” as defendants, which I understand to be a reference to the three deputies already named in this case. (Even if he was not referring to these deputies, he does not include any allegations suggesting that any other Dane County Sheriff’s Department staff were personally involved in the case or that a departmental policy caused the violation and thus plaintiff would not be able to proceed on claims against other staff or the department as a whole.) Accordingly, I will dismiss “Dane County Sheriffs” from the case.

ORDER

IT IS ORDERED that

1. Plaintiff Timothy Coleman is GRANTED leave to proceed on his claims that defendant deputies Foltman, Tillson and Hawley used excessive force against him.

2. Defendants Dane County Sheriffs are 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 their documents.

5. Copies of plaintiff's complaint and this order will be delivered to the U.S. Marshal for service on 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).

Entered this 8th day of October, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge