

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

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LEIGHTON D. LINDSEY,

Plaintiff,

v.

MICHAEL COCKROFT,  
ANGELA REUTER and  
NURSE WEIDENBECK.

Defendants.  
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ORDER

14-cv-27-bbc

Pro se plaintiff Leighton D. Lindsey, a prisoner at the Wisconsin Secure Program Facility, has filed a proposed complaint and is proceeding in forma pauperis. Plaintiff set out two claims in his complaint, one against defendant Michael Cockroft for slamming plaintiff's finger in a trap door on his cell and a second against defendants Angela Reuter and Nurse Weidenbeck for failing to provide him with medical care when the same finger was injured a month later. Proceeding on both claims would have violated Fed. R. Civ. P. 20, which prohibits joining unrelated claims against different defendants in the same lawsuit, so in an order dated March 12, 2014, I instructed plaintiff to tell the court whether he wished to file a new lawsuit or proceed on only one suit. Dkt. #5. Plaintiff responded that he wished to pursue his claim against defendant Cockroft only. Dkt. #6. Accordingly, this claim is ready for screening under 28 U.S.C. § 1915A, and plaintiff's other claim will be dismissed

without prejudice.

Plaintiff makes the following allegations of fact in his complaint.

#### ALLEGATIONS OF FACT

Plaintiff's cell has a sliding trap door at the front so that correctional officers can give plaintiff items such as food and mail without direct physical contact. On March 2, 2013, when Cockcroft delivered plaintiff's medications, plaintiff protested that he had received too little ointment. Cockcroft said that he would not be getting any more, and plaintiff responded by pointing out that Cockcroft had violated security procedures by giving plaintiff a cup. He said he would return the cup if Cockcroft would give him more ointment. Plaintiff returned the cup, but Cockcroft did not provide additional ointment.

In response to this incident, plaintiff refused to remove his hand from the trap door after Cockcroft opened it to give plaintiff his dinner, preventing Cockcroft from closing the door. Cockcroft threatened to "chop [plaintiff's] hand off," *dk.* #1, at 7, if plaintiff failed to move his hand by the time the meal was over. After wedging paper in the door to keep it open, plaintiff placed his hand in the trap door at the end of meal time. Cockcroft ordered him to remove his hand, but plaintiff refused. Cockcroft then closed the trap door hard on plaintiff's hand, injuring his finger. Cockcroft said to plaintiff, "That's for throwing urine on C.O. Scullion." *Id.* at 8. Plaintiff was then provided immediate treatment for his bloody and swollen finger.

## OPINION

“[T]he ‘unnecessary and wanton’ infliction of pain on prisoners constitutes cruel and unusual punishment prohibited by the Eighth Amendment, even in the absence of intent to harm.” Whitley v. Albers, 475 U.S. 312, 328 (1986). However, not all force used in prison settings is unconstitutional. The relevant 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.” Id. at 320. The factors considered 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.

The set of facts in this case is very similar to the facts in Outlaw v. Newkirk, 259 F.3d 833, 839 (7th Cir. 2001), in which the Court of Appeals for the Seventh Circuit held that even if the correctional officer had intended to harm the prisoner by slamming his hand in the “cuffport” in his cell, he had not violated the Eighth Amendment because the force used was de minimis. However, the court ruled that way in part because the prisoner’s injuries were minimal. (His skin was not broken and the swelling only minor.) In this case, plaintiff alleges that his finger was bloody and swollen and that he needed immediate medical attention. Given these facts as well as plaintiff’s allegation that Cockcroft’s reason for

slamming his hand was to retaliate against him for throwing urine, it appears that the force used by Cockcroft was malicious and without penological justification. Hope v. Pelzer, 536 U.S. 730, 737-38 (2002) (use of force after safety concern had subsided may be cruel and unusual punishment). Plaintiff's Eighth Amendment claim against Cockcroft will be allowed to proceed.

## ORDER

IT IS ORDERED that

1. Plaintiff Leighton Lindsey is GRANTED leave to proceed on his Eighth Amendment excessive force claim against defendant Michael Cockcroft, dkt. #1.

2. Plaintiff's denial of medical care claim against defendants Angela Reuter and Nurse Weidenbeck, dkt. #1, is DISMISSED without prejudice.

3. For the time being, plaintiff must send defendant 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 defendant, he should serve the lawyer directly rather than defendant. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendant or to defendant's 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 defendant. Plaintiff should not attempt to serve defendant on his own at this time. 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 defendant.

6. Plaintiff is obligated to pay the unpaid balance of his filing fees 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 accounts until the filing fee has been paid in full.

Entered this 31st day of March, 2014.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge