

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

TEROME THOMPSON,

Plaintiff,

OPINION & ORDER

v.

14-cv-098-wmc

EAU CLAIRE COUNTY SHERIFF
DEPARTMENT *et al.*,

Defendants.

Pro se plaintiff Terome Thompson purports to bring claims against a large number of defendants, all of whom are officials at the Eau Claire County Jail, for alleged failure to protect him from inmate assault, deliberate indifference to his medical needs and retaliation. Thompson has been granted leave to proceed *in forma pauperis*, and he has paid his initial partial filing fee of \$11.40. Because Thompson was incarcerated at the time he filed suit, the court must now screen his complaint under the Prison Litigation Reform Act (“PLRA”) to determine whether it: (1) is frivolous or malicious; (2) fails to state a claim on which relief can be granted; or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915A. After reviewing Thompson’s pleadings, the court concludes that he has stated viable claims for failure to protect, deliberate indifference and First Amendment retaliation against certain defendants. Accordingly, the court will require the state to respond to the claims of behalf of those defendants only.

ALLEGATIONS OF FACT

In addressing a *pro se* litigant's pleadings, the court must read the allegations generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For the purposes of this order, the court accepts the plaintiff's well-pled allegations as true and assumes the following facts.

I. Thompson's Placement in H-Block

On or about December 7, 2012, plaintiff Terome Thompson was transferred to the Eau Claire County Government Center ("ECCGC") to resolve pending court obligations. After two days in the holding cells, defendant Lieutenant Pat Christainsen approached Thompson and advised him that defendant Officer Jon Pendergast was "classifying" Thompson, meaning that he would be moved to General Population shortly.

As Thompson was being escorted from the holding cell, he asked defendant Officer John Higley in which cell block Pendergast had placed him; Higley would not tell him. Allegedly, Higley only pretended not to know, since he actually had access to a computer containing that information. A few minutes later, however, Officer Altman, who is not named as a defendant in this lawsuit, asked Higley the same question and learned that Thompson would be housed in H-Block/Max Pod. In response, Thompson immediately alerted Altman to the fact that he could not be placed in H-Block/Max Pod, because another inmate, Torrie Smith, was housed on that pod.

As Thompson then explained, Smith and he are the subjects of a "no-contact" directive, which precludes them from being housed in the same pod. This designation was apparently based on a previous occasion in which Smith threatened to harm Thompson.¹

¹ That tension between Smith and Thompson allegedly first arose as a result of the misconduct of defendant Officer Robert Huffman, who wanted to orchestrate a fight and so started a rumor that

As a new officer, Altman was concerned, but he felt powerless to do anything. Instead, Altman promised he would look into the situation. Trusting that Altman would take some sort of action, Thompson entered the pod.

After hours passed and no one inquired into the situation, Thompson began to inform every officer who did a round about the mix-up. By this point, Smith had asked Thompson if he “remembered their last conversation,” an oblique reference to the previous threat Smith had made. In an effort to avoid a confrontation, Thompson continued to try to draw attention to his situation, both by sending notes to the officers performing rounds and by calling them into his cell, ostensibly to show them a problem with his sink, but really to ask them to consult the sergeant about moving Thompson before a fight took place.

In total, Thompson alleges that he informed seven officers that Smith posed a risk to him: defendant Officers Huffman, Robert Oates, Joshua Schroeder, Megan Hendrington and Tristan Seidl, as well as two other officers named Grant and Rooker. Allegedly, none of them took Thompson seriously, falsely claiming that there was no sergeant on duty and telling him to send the sergeant a kiosk message to raise his concerns. Finally, Hendrington promised to ensure the sergeant received Thompson’s message if he used the kiosk, which Thompson then did.

Eventually, Thompson accused the officers of trying to “set up a fight.” Schroeder became angry at this accusation, telling Thompson that: he should “stop whining”; he could not dictate his own housing; and he would not be moved. Schroeder also informed

Thompson was a member of the Gangster Disciples. Smith heard the rumor, believed it and threatened to harm Thompson for lying about his gang affiliation. Officer Huffman was allegedly reprimanded for spreading this rumor in question after Thompson filed grievances regarding his lies. Thompson alleges that Huffman thereafter retaliated against him by filing a false conduct report, which resulted in Thompson being “locked down.” Allegedly, Huffman later came back to Thompson’s cell to gloat about how good he was “at lying.”

Thompson that Pendergast had the sergeant's approval to house Thompson with Smith, and that no sergeant would overrule another sergeant. As a result, Schroeder instructed Thompson to write to the lieutenant, because only she could overrule the decision not to move him.

Thompson then tried to avoid Smith and ignore his threats, because he did not want to fight Smith and end up with a felony charge for battery. At one point, he attempted to leave the pod altogether, but defendant Sergeant Phil Field threatened to tase him if he didn't go back inside. Thompson (who is black) also claims that ECCGC staff will frequently move white inmates who claim to be in danger, but his claim of race discrimination went unheeded as well, and he remained housed with Smith.

For a few days, Smith and Thompson managed to avoid getting in a physical altercation, although Thompson alleges that the uneasy peace was due to Smith's belief that Thompson was frightened of him. Smith continued to make implicit threats during this period, as well as bully other inmates for control of their television, shower, phone, canteen and food. In fact, Smith kept the TV Guide in his own cell so no one else could choose a channel to watch.

Irritated by Smith's bullying, Thompson filed a written grievance, but it was returned on the grounds that he needed to give the sergeant or lieutenant time to answer his earlier kiosk message. Thompson waited until shift change and resubmitted the grievance, requesting to be moved, but that grievance disappeared. Then he filed a third grievance, handing it directly to Officer Peterson, who agreed to place the grievance on the captain's desk.

II. Altercation between Smith and Thompson

At some point, Smith went to sleep. Thompson took that opportunity to choose a television channel, first verifying with others that his choice was all right. Smith woke up soon afterward, however, bragging about having beaten up other inmates for trying to change his shows, and then jumped up and said he was watching basketball. Thompson tried to reason with Smith, saying that the television was for all of them to watch, but Smith changed the channel back and began to threaten Thompson directly. Smith and Thompson continued to argue, changing the channel back and forth as Smith allegedly tried to physically intimidate Thompson, who stood his ground.

Finally, Thompson claims that Smith charged and pushed him backward over the guardrail. Thompson hit his head on the floor, which nearly knocked him unconscious, and then realized that Smith had jumped on top of him and was elbowing him in the mouth, knocking two of his teeth loose and causing his gums to bleed. Although dazed, Thompson began yelling at Smith to get off of him; by the time that officers arrived, Smith had hit Thompson three more times, splitting his lip.

An unidentified officer then yelled over the intercom, telling the spectators to go into lockdown and clear the dayroom. Smith got off Thompson at that point, and Thompson got to his feet, dazed and seeing double. As he tried to climb over the rail, he realized Smith was near him, still talking as though in “fight mode.” To defend himself, Thompson allegedly closed his eyes and began swinging wildly to make Smith back off. The two landed blows at the same time, and Thompson lost his footing and dropped to one knee. He then placed a table between Smith and himself, keeping Smith at bay until officers arrived.

Throughout the fight, defendants Officers Jackie Olson, Daniel Noel, Daniel Porn and Huffman allegedly had tasers, pepper spray and metal batons at the ready -- meaning that they had the ability to stop the assault -- but they failed to intervene in any way. In particular, Noel allegedly watched the assault from the very beginning and could have intervened but instead stood by.

III. Examination by Nurse Doe

The officers then asked Thompson if he was hurt. After answering he was, defendant Nurse Aaron Doe began to check him over, asking if he was missing teeth and offering him generic Tylenol and gauze. Thompson tried to tell Nurse Doe about the pain in his neck and back and about his trouble focusing, but she allegedly ignored him. In fact, Thompson alleges that Nurse Doe and some of the officers present were smirking throughout the examination, as though they found his injuries amusing.

Eventually, Nurse Doe gave Thompson an ice pack and walked away, saying, "He'll be okay," even though he was still bleeding, dizzy and in severe pain. Nurse Doe never performed any follow-up examinations of Thompson. Indeed, Thompson claims she refused to acknowledge his back injury or arrange for Thompson to get stitches.

IV. Retaliation

Thompson was later escorted to the special needs pod by Oates. For the rest of that night and during the following day, he noticed various officers laughing behind his back, whispering, pointing at him and smirking. Thompson tried to obtain the defendants' names for purposes of filing a lawsuit, but he was told that information was "confidential." They also threatened to charge Thompson with battery, so as to "moot" any lawsuit that he filed.

At some point, officers doing third shift rounds began to retaliate against Thompson by kicking his cell door as they passed and “continuously gloating under their breath” about the assault. Thompson even received word from a fellow inmate that certain officers, including Huffman, Sergeant Field, Barnet, Corey Bergevin, John Lorenz and Swier-Peterson, were congratulating Smith and thanking him for assaulting Thompson.

Later, Officer Pendergast caused Thompson to be ineligible for an Early Release Program. Specifically, he told an unnamed “specialist” that Thompson was the aggressor in the altercation between Thompson and Smith. Pendergast also told the specialist that Thompson was “notorious for arguing with other inmates.” Had it not been for Pendergast, Thompson alleges, he would have been classified as a medium custody inmate. Instead, he was classified as a maximum security inmate.

Thompson also alleges that he is now a victim of a vast conspiracy based on his “fortitude and advocacy for fairness.” (Compl. (dkt. #1) ¶ 150.) He alleges that generally, the defendants have attempted to assist prosecutors by setting up fights and assaults on him so as to charge him with crimes. He further alleges that defendant Sergeant Michael Klotz is the “main conspirator,” who targeted him for retaliation because of his grievance filing, and that Klotz, along with defendant Sergeant Field, placed him in a cell block full of self-proclaimed racists. Furthermore, he alleges that Field blocked his attempts to appeal his grievances and that Lorenz, Higley, Seidl, Huffman, Klotz and Field all intercepted his grievances when they deal with misconduct involving racial discrimination.

V. Long-Term Health Effects

Thompson alleges that after the assault, he was eventually moved to Dodge Correctional Institution (“DCI”), at which time he went to the hospital unit. Staff at DCI determined that: (1) Thompson had suffered neck, back and head injuries; (2) his teeth needed to be fixed or pulled; and (3) his gums had not healed properly, due to the fact that he never got stitches.

More than a year after the assault, Thompson still takes painkillers for his back problem, although he has struggled to find one that works well for him. He continues to undergo physical therapy and uses a special mattress, foam neck pillow, ice packs and a back binder to keep his back from “shifting” at night. He also suffered from weight gain and depression due to the injuries he sustained, and is unable to sleep on his back, preventing him from using the breathing machine required to combat a sleeping disorder he has.

OPINION

I. Failure to Protect

The Eighth Amendment requires that prison officials “take reasonable measures to guarantee the safety of the inmates.” *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (quoting *Hudson v. Palmer*, 468 U.S. 517, 526-27 (1984)).² “In particular, . . . ‘prison officials have a duty . . . to protect prisoners from violence at the hands of other prisoners.’” *Id.* at 833

² It is unclear from Thompson’s pleadings whether he was a pretrial detainee or a convicted state prisoner at the time of the alleged assault. If the former, his failure to protect claim arises under the Fourteenth Amendment’s Due Process Clause, not the Eighth Amendment. *Brown v. Budz*, 398 F.3d 904, 910 (7th Cir. 2005). At this point, there is “little practical difference between the two standards.” *Weiss v. Cooley*, 230 F.3d 1027, 1032 (7th Cir. 2000), although the proper standard is under consideration by the United States Supreme Court. “§ 1983 claims brought under the Fourteenth Amendment are to be analyzed under the Eighth Amendment test.” *Brown*, 398 F.3d at 910 (quoting *Henderson v. Sheahan*, 196 F.3d 839, 844 n.2 (7th Cir. 1999)).

(quoting *Cortes-Quinones v. Jimenez-Nettleship*, 842 F.2d 556, 557 (1st Cir. 1988)). To state a claim for failure to protect, Thompson must allege: (1) that he was incarcerated “under conditions posing a substantial risk of serious harm,” and (2) his custodians were deliberately indifferent to that substantial risk, *Brown v. Budz*, 398 F.3d 904, 910-13 (7th Cir. 2005) (quoting *Farmer*, 511 U.S. at 834).

Thompson has certainly alleged sufficient facts to meet the first prong of his failure to protect claim. Viewed in a light most favorable to Thompson, Smith had made credible, repeated threats to harm him, but ECCGC placed them in the same cell pod in violation of its own rule that there be “no contact” between them. Finally, Smith followed through on his threats, seriously injuring Thompson.

With respect to the second prong, the sufficiency of the allegations is a closer question. Thompson must allege that each defendant was actually aware of the substantial risk of serious harm to him and chose to disregard it. *See Brown*, 398 F.3d at 913. Thompson alleges that while he was housed with Smith, he informed at least five of the defendants -- Officers Huffman, Oates, Schroeder, Hendrington and Seidl -- of the risk Smith posed to him, and that he begged to be moved, all to no avail.³ Again viewed in the light most favorable to Thompson, these allegations are sufficient for the court to infer that each of these defendants actually knew that Thompson faced a substantial risk of being assaulted if left in the same cell pod with Smith and failed to take reasonable steps to mitigate that risk – indeed, failed to take *any* steps at all. *See id.* at 915 (noting that the Seventh Circuit has “often found deliberate indifference where custodians know of threats

³ Thompson also says he informed an “Officer Grant” and an “Officer Rooker” of the risk to his safety, but neither of these officers is named as a defendant in this case.

to a *specific detainee* posed by a *specific source*") (emphasis in original). Accordingly, he may proceed against those defendants on claims for failure to protect him from assault.

Thompson may also proceed on his claims against Officer Jon Pendergast, who is alleged to have originally placed Thompson in the pod with Smith despite knowing that a "no-contact" order existed between the two inmates. On the facts as alleged, a reasonable factfinder could conclude that Pendergast knew of a substantial risk of harm to Thompson, but disregarded it (indeed, encouraged it) by placing Smith and Thompson in the same pod.

Additionally, Thompson has alleged that four officers -- Jackie Olson, Daniel Noel, Daniel Porn and Huffman -- were watching as Smith attacked him; were equipped with batons, pepper spray and tasers; had the opportunity to intervene; and chose to wait a substantial amount of time, until Smith had already injured Thompson, before responding and breaking up the fight. At least at the screening stage, this is enough for a factfinder to infer that these four defendants "effectively condone[d] the attack by allowing it to happen." *Langston v. Peters*, 100 F.3d 1235, 1237 (7th Cir. 1996) (quoting *Haley v. Gross*, 86 F.3d 630, 640 (7th Cir. 1996)); see also *Grieverson v. Anderson*, 538 F.3d 763, 778 (7th Cir. 2008) ("Officer Highbaugh allegedly watch the assault but did not intervene to protect Grieverson – exhibiting quintessential deliberate indifference.").

With two exceptions, Thompson has *not* alleged sufficient facts to state a claim for failure to protect against the remaining defendants. Thompson alleges that defendants Ron Cramer, Joel Bretegan, Pat Christainsen, Kevin Otto, Michael Klotz, Rick Olson and Phil Field are liable for failure to protect him because they "formulated a policy or engaged in a practice that led to the civil rights violation committed by another," but he entirely fails to

identify any policy or practice that resulted in the harm of which he complains.⁴ Indeed, Thompson's pleading suggests that the behavior of the defendants actually ran *contrary* to policy by failing to adhere to the "no contact" order in Thompson's file. He also suggests that they were personally involved in the failure to protect Thompson insofar as they refused to allow the officers on duty to move Thompson from the pod. But, again, Thompson alleges no *facts* supporting this theory. On the contrary, all the facts he alleges suggest that it was the *individual officers* who refused to take him seriously and get a sergeant to move him. With just two exceptions, there are no allegations that any of these supervisory defendants had actual knowledge that Thompson was in a hazardous situation.

The first exception to this general deficiency is Sgt. Phil Field. Thompson alleges that Field was actually present when he tried to escape the dangerous situation by leaving the pod, and that Field ordered him to go back inside or he would be tased. Given Thompson's general allegations that he vocally protested the arrangement and asked to be moved to avoid a physical fight, the court can at least *infer* that Field, at least, would have been aware that Thompson was at substantial risk of serious harm but decided not to take any action.

The second exception is Lt. Pat Christainsen. According to Thompson's complaint, Christainsen would have been informed of the danger Thompson was in, at a minimum, via the kiosk message he sent. That message, coupled with the "no contact" order, could be sufficient to put Christainsen on notice that Smith posed a danger to Thompson. And she

⁴ He also alleges that Sheriff Cramer was "grossly negligent" in managing his subordinates, but provides no specific allegations to support this general conclusion. "Supervisors who are simply negligent in failing to detect and prevent subordinate misconduct are not personally involved" in an alleged § 1983 violation. *Gossmeyer v. McDonald*, 128 F.3d 481, 495 (7th Cir. 1997). Without more, therefore, Thompson may not proceed against Sheriff Cramer.

allegedly failed to take action to mitigate that threat. Accordingly, Thompson may proceed against her as well.

Thompson also names as defendants Officers Sally Roberts, Randy Olson, John Lorenz, Corey Bergevin and Chris Bergerson, but alleges no facts suggesting these officers were personally involved in any failure to protect him. Indeed, some defendants, like Roberts, do not appear to be named in the main body of his complaint at all, while others, like Bergevin, appear only after the fact, for alleged actions like thanking Smith for assaulting Thompson (which, while reprehensible if true, does not by itself state a claim for failure to protect). Bergerson and Lorenz are also alleged to be “classification/reclass” officers, but that status alone does not allow for a reasonable inference that they actually knew of *any* of the events allegedly transpiring. Without alleging *facts* (as opposed to mere legal conclusions) showing that these defendants knew of a substantial risk of harm to Thompson but failed to take reasonable steps to mitigate that risk, Thompson may not proceed against these defendants on a claim for failure to protect.

Finally, Thompson has also named Higley, who is alleged to be a classification officer but who, unlike Lorenz and Bergerson, is alleged to have known of Thompson’s placement with Smith and informed Altman of that classification. While a close question, the court will permit Thompson to proceed against Higley for the present, since it may be inferred that an officer who is asked to report on an inmate’s classification would have knowledge of the limitations and no-contact orders attached to that inmate. Allegedly, Higley also failed to take any action, either by reclassifying Thompson or by informing the sergeant or lieutenant to mitigate the risk that Thompson’s placement created. Accordingly, Thompson

has alleged sufficient facts to pass the low bar of screening and may proceed on this claim as well.

II. Deliberate Indifference to Medical Needs

Next, Thompson seeks to bring a claim for deliberate indifference to his serious medical needs against defendant Aaron Doe, the nurse who saw him after the assault took place. To state a claim for deliberate indifference premised on inadequate medical care, Thompson must allege: (1) his condition was objectively, sufficiently serious; and (2) Doe was actually aware of an excessive risk to his health but disregarded the risk. *See Greeno v. Daley*, 414 F.3d 645, 653 (7th Cir. 2005).

“A serious medical condition is one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would perceive the need for a doctor’s attention.” *Id.* Here, Thompson has alleged that he suffered a number of serious injuries as a result of Smith’s attack, including head, neck and back injuries that were later diagnosed by staff at DCI and injuries to his teeth and gums that went untreated and have now healed improperly. Taken as true, these conditions constitute a serious medical need for screening purposes.

Thompson has also alleged enough facts to support a reasonable inference that Doe was aware of the seriousness of his injuries but disregarded the risk to his health. Instead, before stating simply that Thompson would be “okay,” Doe allegedly provided him with generic painkillers and gauze, rejected his attempts to explain the severe pain he was suffering, and then gave him an ice pack. Doe also allegedly failed to follow up to check on his condition in any way, although Thompson manifested potentially serious head and neck

injuries. This is enough to raise an inference, at least at screening, that the treatment Doe provided was “so blatantly inappropriate as to evidence intentional mistreatment.” *Snipes v. DeTella*, 95 F.3d 586, 592 (7th Cir. 1996); *see also King v. Kramer*, 680 F.3d 1013, 1018-19 (7th Cir. 2012) (deliberate indifference may be inferred when medical professional’s decision is “such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible did not base the decision on such a judgment”) (quoting *Estate of Cole by Pardue v. Fromm*, 94 F.3d 254, 261-62 (7th Cir. 1996)). Accordingly, Thompson may proceed on this claim.⁵

III. Retaliation

Finally, Thompson alleges that various defendants have retaliated against him in violation of the First Amendment. To state a claim for First Amendment retaliation, Thompson must allege that (1) he engaged in activity protected by the First Amendment; (2) he suffered a deprivation that would likely deter future First Amendment activity; and (3) the protected activity was at least a motivating factor in the decision to retaliate. *Bridges v. Gilbert*, 557 F.3d 541, 546 (7th Cir. 2009).

Thompson first names Klotz and Field, alleging that they deliberately placed him in a cell block filled with violently racist inmates in retaliation for the grievances he filed. *See Babcock v. White*, 102 F.3d 267, 276 (7th Cir. 1996) (internal citations omitted) (“The federal courts have long recognized a prisoner’s right to seek administrative or judicial

⁵ As noted above, it remains unclear whether Thompson was a pretrial detainee or an inmate at the time of these events. As a pretrial detainee, his claim would be evaluated as a Fourth Amendment objective reasonableness claim, rather than under the Eighth Amendment’s deliberate indifference standard. *See King v. Kramer*, 763 F.3d 635, 639-40 (7th Cir. 2014). However, the court has concluded that Thompson has stated a claim under the “more exacting” standard of the Eighth Amendment. *Id.* at 640.

remedy of conditions of confinement, as well as the right to be free from retaliation for exercising this right”). It is reasonable to infer that placing an inmate in a cell block with violently racist cell mates would likely deter future First Amendment activity. Thompson also alleges the required causal link by indicating that the placement was “in retaliation for grievance filing.” (Compl. (dkt. #1) ¶ 152.) Accordingly, Thompson may proceed on First Amendment retaliation claims against Klotz and Field.

He next alleges that defendants Lorenz, Higley, Huffman, Seidl, Klotz and Field retaliated against him by intercepting grievances he has filed that deal with racial remarks and racially-biased decisions, stonewalling him until he gave up on obtaining relief. While ordinarily, an isolated suppression of a grievance might not support a First Amendment retaliation claim, here Thompson has alleged the *repeated* interception of his grievances, to the point where he eventually gives up exercising his First Amendment rights. While Thompson may have difficulty proving this practice, it is enough to state a claim for retaliation against these defendants at the screening stage.

Thompson also brings two other discrete retaliation claims against: (1) Huffman for filing a false disciplinary report in retaliation for the grievance Thompson filed; and (2) Pendergast for calling the classification specialist at DCI and giving an exaggerated and falsified account of the fight between Thompson and Smith, which resulted in an unjustified maximum-security classification.⁶ Both actions were allegedly taken in retaliation for Thompson’s filing of grievances, and both could deter a person of ordinary firmness from

⁶ Thompson also alleges that Pendergast’s call resulted in the loss of his early release date, but Thompson cannot use a § 1983 suit to seek relief -- including damages for lost credit -- unless he has successfully challenged the length of his confinement via a writ of habeas corpus. *See Castillo v. Johnson*, No. 14-1438, 2014 WL 5576231, at *2 (7th Cir. Nov. 4, 2014).

exercising his First Amendment rights in the future. *See Bridges*, 557 F.3d at 552 (noting that prisoner suffered retaliation through, among other things, “unjustified disciplinary charges”); *Cornell v. Woods*, 69 F.3d 1383, 1389 (8th Cir. 1995) (prison officials cannot impose disciplinary sanctions against a prisoner in retaliation). Accordingly, he may also proceed on these claims.

Finally, Thompson again seeks to hold the supervisory officials liable for their subordinates’ retaliation, alleging that they manage the day-to-day operations of ECCGC and allowed the other defendants to retaliate against him. As discussed above, “to be liable for the conduct of subordinates, a supervisor must be personally involved in that conduct.” *Chavez v. Ill. State Police*, 251 F.3d 612, 651 (7th Cir. 2001) (quoting *Lanigan v. Vill. of E. Hazel Crest, Ill.*, 110 F.3d 467, 477 (7th Cir. 1997)). “[S]upervisors who are merely negligent in failing to detect and prevent subordinates’ misconduct are not liable.” *Id.* (alteration in original) (quoting *Jones v. City of Chi.*, 856 F.2d 985, 992 (7th Cir. 1988)). Thompson has alleged no facts suggesting that any of the supervisory defendants acted knowingly or with deliberate indifference in failing to stop their subordinates’ allegedly retaliatory actions, and so he may not proceed on those claims.

IV. Burden of Proof Going Forward

While Thompson’s allegations against defendant Doe pass muster under the court’s lower standard for screening, he should be aware that to be successful on his claim, he will have to prove defendant’s deliberate indifference, which is a high standard. Inadvertent error, negligence or gross negligence are insufficient grounds for invoking the Eighth Amendment. *Vance v. Peters*, 97 F.3d 987, 992 (7th Cir. 1996). In particular, it will be

Thompson's burden to prove: (1) his medical condition constituted serious medical needs, which may well require expert testimony rebutting medical evidence to the contrary; and (2) perhaps even more daunting, that the defendant knew his condition was serious and deliberately ignored his condition and related pain.

Thompson should also be aware of the difficult burden he will face going forward on his First Amendment retaliation claim. A plaintiff may neither prove his claims with the allegations in his complaint alone, *Sparing v. Village of Olympia Fields*, 266 F.3d 684, 692 (7th Cir. 2001), nor with his personal beliefs, *Fane v. Locke Reynolds, LLP*, 480 F.3d 534, 539 (7th Cir. 2007). Rather, Thompson will need to come forward with admissible evidence indicating some causal connection between his First Amendment activity and the allegedly retaliatory actions the various defendants took. The timing of the events will likely not be enough by themselves, since even when the exercise of the right and the adverse action occur close in time, it is rarely enough to prove an unlawful motive without additional evidence. *Sauzek v. Exxon Coal USA, Inc.*, 202 F.3d 913, 918 (7th Cir. 2000) ("The mere fact that one event preceded another does nothing to prove that the first event caused the second.").

ORDER

IT IS ORDERED that:

- 1) Plaintiff Terome Thompson is GRANTED leave to proceed on the following claims:
 - a. A claim for failure to protect him from assault against defendants Robert Huffman, Robert Oates, Joshua Schroeder, Megan Hendrington, Tristan Seidl, Jon Pendergast, Jackie Olson, Daniel Noel, Daniel Porn, Pat Christainsen, John Higley and Sgt. Phil Field.

- b. A claim for deliberate indifference to his serious medical needs against Nurse Aaron Doe.
 - c. A claim for First Amendment retaliation against defendants Michael Klotz, Field, Huffman, Higley, Seidl, Pendergast and John Lorenz.
- 2) Plaintiff is DENIED leave to proceed in all other respects.
 - 3) The summons, complaint and a copy of this order are being delivered to the U.S. Marshal for service on defendants.
 - 4) 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 documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendant's attorney.
 - 5) 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.

Entered this 16th day of June, 2015.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge