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

QUENTRELL EUGENE WILLIAMS,

Plaintiff,

v.

DANE ESSER, TIM HAINES, and JANE DOES,

Defendants.

OPINION AND ORDER

18-cv-1008-wmc

Pro se plaintiff Quentrell Williams, now incarcerated at Waupun Correctional Institution, filed suit in late 2018 against the warden, a lieutenant and three on-site nurses at Wisconsin Secure Program Facility ("WSPF"), alleging deliberate indifference to serious medical needs, excessive force and failure to intervene. His amended complaint is ready for screening as required by 28 U.S.C. § 1915A. For the reasons that follow, Williams will be granted leave to proceed on all of his claims under the Eighth Amendment.

ALLEGATIONS OF FACT[1]

During all relevant times, Williams was incarcerated at WSPF; defendant Tim Haines was WSPF's warden; defendant Dane Esser was one of its lieutenants; and the Jane Doe defendants were both nurses at WSPF.

Plaintiff's complaint outlines three instances when Lieutenant Esser allegedly used incapacitating agents on him, despite such sprays being contraindicated by his asthmatic respiratory condition. More specifically, Williams alleges that health services

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[1] In addressing any pro se litigant's complaint, the court must read the allegations generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of this order, the court assumes the following facts based on the allegations in plaintiff's complaint, unless otherwise noted.

"automatically informs the security department" of this contraindication (Amend. Compl. (dkt. #9) ¶ 3), meaning Lieutenant Esser acted with wanton disregard of or deliberate indifference to his medical condition by using the incapacitating agents instead of summoning a cell extraction team. For each of these incidents, Williams further faults a Jane Doe nurse defendants for failing to stop Esser from spraying the incapacitating agents. Finally, Williams alleges that DOC policy required security personnel to tell health services personnel before using incapacitating agents *and* health services to maintain a list of inmates with contraindications for incapacitating agents.

The first of these incidents occurred on March 3, 2013. At the time, Williams was in clinical observation when a non-defendant correctional officer handed him a glass nasal spray bottle.[2] After Williams shattered the glass bottle on the ground and began eating the glass, defendant Esser began spraying him with incapacitating agents without warning.

The second incident occurred on May 25, 2013, after Williams suffered from auditory and visual hallucinations while in cell #202 and smeared feces around the cell. When the hallucinations stopped, Williams turned off his light and fell asleep by the vent at the back of the cell. He later woke up to a burning sensation all over his body and in his eyes. Unable to breathe, Williams heard Lieutenant Esser directing him to come to the door to be handcuffed and removed from the cell. He then received a decontamination shower and two puffs of his albuterol inhaler. After being placed in cell #402, however, he began reacting to the incapacitating agent, necessitating a trip back to the nurses' station for a nebulizer treatment. Williams alleges that after asking Esser why he had used the

[2] Plaintiff alleges that this action also violated policies prohibiting inmates in clinical observation from receiving glass bottles, but asserts no claim arising out of this conduct.

incapacitating agents on this occasion, Esser answered that he used them because Williams was lying in the back of his cell, failed to respond when addressed, and Esser could not see what Williams was doing. Williams informed him that he had been sleeping, adding that anything could have been wrong, making the use of incapacitating agents inappropriate.

The third incident occurred on June 29, 2013, following Williams attempt to commit suicide by tying material from a spit mask together to create a long noose and trying to choke himself. After watching Williams for a moment, Esser started spraying multiple types of incapacitating agents, during which Williams fell to the ground. While Williams was on the ground, but still conscious, Esser further shot pepper balls from a gun at him. Because he was having trouble breathing, Williams received a decontamination shower and a nebulizer treatment. He also received treatment for cuts and bruises caused by the pepper balls. The wounds Williams suffered from this third incident were painful enough that they prevented him from sleeping for several days thereafter.

Williams next complains of a strip-search incident on June 25, 2013. Again in clinical observation, Williams allegedly covered the small window at the front of the cell with Styrofoam because he thought he saw aliens peering in at him. After Esser came to the cell door, he directed Williams to come to be handcuffed and removed. When asked why, Esser accused him of engaging in self-harm and explained that he wanted to retrieve the dangerous item. When Williams refused, protesting that he was not harming himself and did not have anything, Esser called a cell extraction team. Once assembled, the extraction team allegedly stripped Williams naked, wrapped his waist in a towel, put shackles on his legs, and handcuffed him behind his back before escorting him to a strip cage. In the strip cage, Esser further directed him to kneel and said that he was going to

conduct a staff-assisted strip search. While kneeling, Esser and other officers searched through Williams' hair, spread his buttocks, looked under his armpits, and directed him to open his mouth. Officers then used their thumbs to apply pressure between his earlobe and jawline, while tasering Williams' neck and shoulder. Williams alleges that he was not resisting, was noncombative and otherwise defenseless.

Williams alleges that Warden Haines was aware of Esser's practice of using incapacitating agents against inmates with contraindications, including Williams, and Haines knew that the nurses were failing to stop this practice. In particular, he identifies five, separate instances where he was sprayed with incapacitating agents to establish a practice or custom violating DOC policy. Williams further alleges that policy requires Haines be kept abreast of all use of force incidents, and that Williams personally filed several inmate complaints, so that the warden was aware of these violations. Finally, despite Warden Haines' knowledge of these events, he never intervened or corrected his subordinates' misconduct.

OPINION

Plaintiff's complaint supports claims for: (1) excessive force against Lieuntenant Esser; (2) deliberate indifference to a serious medical need against all defendants; and (3) failure to protect against Warden Haines and the "Jane Doe" nursing defendants. The court addresses each claim in turn.

I. Excessive Force

For a plaintiff to succeed on an excessive force claim, he must submit evidence that the prison official acted "wantonly or, stated another way, 'maliciously and sadistically for

the very purpose of causing harm.'" *Harper v. Albert*, 400 F.3d 1052, 1065 (7th Cir. 2005) (quoting *Wilson v. Seiter*, 501 U.S. 294, 296 (1991)). Relevant factors are: (1) the need for the application of force; (2) the relationship between the need and the amount of force used; (3) the extent of injury inflicted; (4) the extent of threat to the safety of staff and inmates, as reasonably perceived by the responsible officials based on the facts known to them; and (5) any efforts made to temper the severity of a forceful response. *Whitley v. Albers*, 475 U.S. 312, 321 (1986). Because prison officials must sometimes use force to maintain order, the central inquiry is whether the force "was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." *Id.* at 320-21 (quoting *Johnson v. Glick*, 481 F.2d 1028, 1033 (2d Cir. 1973)).

Here, plaintiff has alleged sufficient facts to proceed against defendant Esser on claims for excessive force for the three incidents involving the application of incapacitating agents, as well as the June 25 strip-search. As to the former, plaintiff alleges that Esser's use of the incapacitating agents was both unnecessary and done without any attempt to temper the severity of the force used or warning, despite Esser's knowledge that its use on plaintiff was contraindicated medically and would require plaintiff to seek treatment from health services. In each incident, plaintiff further alleges he posed no threat to the safety of staff or other inmates. In particular, plaintiff alleges that in the second incident, he was asleep, and in the third, he was nearly unconscious. Further, the third incident involved the shooting of pepper balls while he was on the ground, which needlessly caused cuts and bruises, resulting in pain lasting for several days. This is enough for plaintiff to go forward past screening as to each of the three incidents.

Finally, as to the strip-search incident, plaintiff alleges that despite cooperating in the search of his person, Esser directed other officers to taser him and force his mouth open wider. A jury could reasonably infer that there was no need for the use of any force given that he posed no threat to himself, other inmates, or officers. Indeed, if as alleged, a jury found that plaintiff was fully complying and not resisting during the search, Esser's direction of the use of force could be reasonably be found unnecessary and excessive. This, too, is sufficient. Accordingly, plaintiff may proceed on these claims.

II. Deliberate Indifference to a Serious Medical Need

A prison official violates the Eighth Amendment if he or she acts with "deliberate indifference" to a "serious medical need." *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976). To proceed on this claim, plaintiff must allege that "he faced a substantial risk due to an objectively serious medical condition and that [the defendant] was deliberately indifferent to that risk." *Palmer v. Franz*, 928 F.3d 560, 563 (7th Cir. 2019). "A 'serious' medical need is one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Foelker v. Outagamie Cty.*, 394 F.3d 510, 512 (7th Cir. 2005) (quoting *Jackson v. Illinois Medi-Car, Inc.*, 300 F.3d 760, 765 (7th Cir. 2002)). "A medical condition need not be life-threatening to be serious; rather, it could be a condition that would result in further significant injury or unnecessary and wanton infliction of pain if not treated." *Palmer*, 928 F.3d at 564 (quoting *Gayton v. McCoy*, 593 F.3d 610, 620 (7th Cir. 2010)). As to the deliberate indifference, "it is enough to show that the defendants knew of a substantial risk of harm to the inmate and disregarded the risk." *Id.* (quoting *Greeno v.*

Daley, 414 F.3d 645, 653 (7th Cir. 2005)). For example, in *Palmer*, the Seventh Circuit reversed the district court's grant of summary judgment to the defendant where plaintiff was missing a left hand, which was a serious medical condition, and defendant failed to act despite knowing the heightened risk of harm, resulting in plaintiff falling and seriously injuring his knee.

Here, plaintiff has alleged that he suffers from an asthmatic respiratory condition which contraindicates use of incapacitating agents, both Lieutenant Esser and the Jane Doe nurses knew of this contraindication, and yet repeatedly used them or permitted their use. Moreover, plaintiff alleges the use of these agents made it difficult for him to breathe, caused him pain, and required medical attention. As to defendant Haines, plaintiff alleges that both as warden and as recipient of his complaints, Haines had the opportunity and obligation to correct this repeated violation of WSPF's policy and failed to do so. Accordingly, plaintiff may proceed on these claims as well against Esser, the Doe defendants and Haines.

III. Failure to Intervene

A prison official may also be liable for a failure to intervene if he knew about a constitutional violation and had the ability to intervene, but failed to do so "with deliberate or reckless disregard for the plaintiff's constitutional rights." *Koutnik v. Brown*, 351 F. Supp. 2d 871, 876 (W.D. Wis. 2004) (citing *Fillmore v. Page*, 358 F.3d 496, 505-06 (7th Cir. 2004)). Plaintiff may proceed on these claims as well, based on his allegations that the Jane Doe defendants and defendant Haines were in a position to prevent Esser from using the incapacitating agents on him through their positions in the HSU and as warden,

respectively. As to the Jane Doe nurses, plaintiff alleges that there is a policy that before a correctional officer may use an incapacitating agent, the officer is to inform the health services personnel, who have a list of inmates with contraindications, yet they did not stop Esser. As to Haines, plaintiff alleges that he had knowledge of Esser's repeated use of the incapacitating agents against him and that he failed to take measures to stop the practice. Accordingly, plaintiff may proceed on failure to intervene claims against the Doe defendants and Esser.

IV. Burden of Proof

One final note with respect to plaintiff's deliberate indifference claims in particular. Although plaintiff's allegations pass muster under the court's lower standard for screening as to defendants Esser, the Jane Doe nurses and Haines, he will have to present admissible evidence permitting a reasonable trier of fact to conclude that defendants acted with deliberate indifference to his serious medical need to be successful on his claim, which is a high standard. Inadvertent error, negligence or even gross negligence are all insufficient grounds to invoke the Eighth Amendment. *Vance v. Peters*, 97 F.3d 987, 992 (7th Cir. 1996). In particular, it will be plaintiff's burden to prove: (1) his condition constituted a serious medical need; and (2) perhaps even more daunting, that the defendants knew his contraindication was serious, but either used the incapacitating agents or allowed them to be used. Both elements may well require plaintiff to provide credible, expert testimony from a physician in the face of medical evidence to the contrary.

ORDER

IT IS ORDERED that:

1) Plaintiff Quentrell Williams is GRANTED leave to proceed on Eighth Amendment excessive force claims against defendant Esser.

2) Plaintiff is GRANTED leave to proceed on Eighth Amendment deliberate indifference to a serious medical need claim against all defendants.

3) Plaintiff is GRANTED leave to proceed on Eighth Amendment failure to intervene claims against defendant Haines and the Jane Doe defendants.

4) 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 the state defendants. Under the agreement, the Department of Justice will have 60 days from the date of the Notice of Electronic Filing in this order to answer or otherwise plead to plaintiff's complaint if it accepts service for the defendants.

5) The Jane Doe defendants shall not be served until plaintiff identifies them and amends his complaint accordingly.

6) 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 the defendants' attorney.

7) 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.

8) If plaintiff is transferred or released while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendants or the court is unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 3rd day of December, 2019.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge