

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

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MATTHEW LABREC,

Plaintiff,

v.

MICHAEL DITTMAN, LINDSAY WALKER,  
SGT. CHATMAN, SGT. CRAFT, CO II KRATZ,  
CO II WILSON, CO MEEKER, DR. NORGE,  
DR. PERSIKE, DR. SCHWENN, and  
LT. CARTEGENA,

Defendants.

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OPINION & ORDER

16-cv-774-jdp

Pro se plaintiff Matthew LaBrec is a prisoner in the custody of the Wisconsin Department of Corrections, currently housed at the Columbia Correctional Institution (CCI). LaBrec has filed a complaint alleging that CCI staff failed to protect him and were deliberately indifferent to a substantial risk of serious harm when they celled him with a dangerous inmate and refused to move him to a different cell. The court determined that LaBrec qualifies for *in forma pauperis* status, and LaBrec paid the initial partial filing fee set by the court. Dkt. 7.

The next step is for the court to screen the complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief can be granted, or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. §§ 1915, 1915A. When screening a pro se litigant's complaint, the court construes the allegations liberally and in the plaintiff's favor. *McGowan v. Hulick*, 612 F.3d 636, 640 (7th Cir. 2010). After reviewing his allegations, I will allow LaBrec leave to proceed against some of the named defendants.

## ALLEGATIONS OF FACT

I draw the following facts from LaBrec's complaint. Dkt. 1.

On July 20, 2016, defendant Lieutenant Cartegena, a CCI correctional officer, escorted LaBrec to segregation, unit RH-2 (why, LaBrec does not say). On the way, LaBrec asked Cartegena about his new cellmate and explained that he had "pair with care" concerns—cellmate restrictions or preferences, per psychological services. Cartegena told LaBrec that he did not know who would be sharing a cell with him and that segregation staff would decide based on available bed space. When he arrived at RH-2, LaBrec asked defendant Meeker, another CCI correctional officer, about his cellmate and told Meeker about his "pair with care" status. Meeker told LaBrec that he would be sharing a cell with inmate Patrick C. McNeely.

According to LaBrec, CCI staff were aware that McNeely had a history of violence and assaulting his cellmates. One month before CCI staff decided to place LaBrec with McNeely, McNeely had assaulted his then-cellmate. LaBrec told Cartegena and Meeker that he would feel safe sharing a cell with two other inmates (James Emerson and Fredrick Morris), but Meeker said that they could not accommodate LaBrec's request. Cartegena told LaBrec that he had two choices: share a cell with McNeely, as planned; or refuse housing, transfer to RH-1, and receive a conduct report. LaBrec chose the first option.

Upon meeting, McNeely told LaBrec that he did not want to get released, that he was "just waiting for someone to set [him] off," and "I don't take shit from no one, I'll beat them down." *Id.* at 9. McNeely told LaBrec that he had hit his former cellmate twice in the face with a closed fist. LaBrec did not feel safe, and he decided to ask RH-2 staff to move him the next morning.

The next morning, July 21, 2016, LaBrec saw defendant Dr. Persike, a CCI psychologist. LaBrec told Persike that he felt unsafe with his current cellmate and that he needed to be moved. LaBrec told Persike that he had already suggested two alternative cellmates to Cartegena and Meeker. Persike discussed having LaBrec moved with defendant Sergeant Craft, another CCI correctional officer. LaBrec followed up with Craft and defendant Wilson, another CCI correctional officer, and they told LaBrec that they would switch LaBrec with another inmate and house him with an inmate named Bell. LaBrec asked them how long it would take to make the move, as he feared for his safety and wanted to move as soon as possible; Craft told LaBrec to “hang in there” and that they would move him soon. Craft and Wilson then returned LaBrec to the cell he shared with McNeely.

But before Craft and Wilson could move LaBrec, they concluded their shifts and left. Second shift arrived, and LaBrec told defendant Sergeant Chatman, another CCI correctional officer, that he was supposed to be moved to a cell with inmate Bell, as discussed with first-shift staff. Chatman told LaBrec that he would have to take it up with first-shift personnel in the morning, as Chatman did not “do moves.” LaBrec explained his situation and that he did not feel safe, but Chatman simply repeated that he did not “do moves.”

LaBrec then told defendant Kratz, another CCI correctional officer, that he needed to talk to someone from psychological services and that he did not feel safe. LaBrec began crying and having an anxiety attack. Kratz said that he would call psychological services to let them know. LaBrec then asked Meeker, once again, if he would move him. Meeker said that he could not move him and that he would just have to deal with it.

Defendant Dr. Schwenn, a CCI psychologist, came to RH-2 to speak with LaBrec. LaBrec asked to be pulled from his cell so that he could discuss his concerns with Schwenn in

private. LaBrec's request was denied (it is not clear who denied it), and LaBrec spoke with Schwenn from his cell. LaBrec told Schwenn that he did not feel safe in a cell with McNeely and that he was supposed to be moved after his conversations with Persike, Craft, and Wilson during first shift. Schwenn asked LaBrec what she could do to help him, and LaBrec repeated that he needed to be moved. Schwenn then asked LaBrec to be specific about what he feared would happen if he were not moved, to which LaBrec responded that he could not be specific because he could not predict McNeely's actions. Schwenn left. The second-shift staff had refused to move him.

The next day, July 22, 2016, LaBrec had a follow-up meeting with defendant Dr. Norge in psychological services (Persike was not in that day). LaBrec spoke with Norge in the RH-2 dayroom, explaining that McNeely had a history of being violent toward his cellmates. Dr. Norge told LaBrec that he would see whether CCI staff would move him.

LaBrec was then taken to see defendant Lindsay Walker, a CCI unit manager, to be offered an "uncontested major disposition." (This seems unrelated to the McNeely situation.) LaBrec then asked Walker why her staff were disregarding his "pair with care" status and refusing to move him to a different cell. LaBrec told Walker that he did not feel safe with McNeely and that he had discussed his concerns with first-shift personnel the day before. Walker told LaBrec that she would discuss only the conduct report at that time, and eventually LaBrec was returned to the cell he shared with McNeely.

In the early morning hours of July 24, 2016, McNeely stabbed LaBrec several times.

## ANALYSIS

LaBrec brings an Eighth Amendment failure to protect claim pursuant to 42 U.S.C. § 1983. The Eighth Amendment “requires prison officials to take reasonable measures to guarantee the safety of the inmates and to protect them from harm at the hands of others.” *Boyce v. Moore*, 314 F.3d 884, 888 (7th Cir. 2002) (citations and internal quotation marks omitted). A prison official violates the Eighth Amendment’s prohibition against cruel and unusual punishment “only when a guard is deliberately indifferent to a substantial risk of serious harm.” *Riccardo v. Rausch*, 375 F.3d 521, 525 (7th Cir. 2004). A prison official is deliberately indifferent if he “knew of a serious danger to [the prisoner] (really knew—not just should have known, which would be all that would be required in a negligence case) and could easily have prevented it from materializing but failed to do so[.]” *Case v. Ahitow*, 301 F.3d 605, 605 (7th Cir. 2002); *see also Farmer v. Brennan*, 511 U.S. 825, 829 (1994) (Deliberate indifference requires “a showing that the official was subjectively aware of the risk.”). In other words, a prison official is deliberately indifferent to a substantial risk of serious harm if the official “effectively condones the attack by allowing it to happen.” *Santiago v. Walls*, 599 F.3d 749, 756 (7th Cir. 2010) (citation and internal quotation marks omitted).

Here, LaBrec has alleged that most, if not all, of the named defendants knew that he felt unsafe sharing a cell with McNeely and that he wanted to be moved. And I can infer that the correctional officers and security staff defendants knew about McNeely’s history of assaulting his cellmates. Requisite subjective knowledge established, I turn to defendants’ individual actions.

I will allow LaBrec to proceed against Craft, Wilson, Chatman, Meeker, and Walker. Although Craft and Wilson were initially attentive to LaBrec's complaints and lined up a cellmate trade (they set in motion plans to cell LaBrec with Bell), they did not follow through on the move. I can infer that Craft and Wilson determined that LaBrec faced a risk of harm sufficient to warrant a move, and so their failure to follow through may qualify as deliberate indifference. Similarly, Chatman, Meeker, and Walker knew that LaBrec feared McNeely, knew that first-shift security personnel had made plans to move him, yet brushed aside his concerns.

But LaBrec does not allege facts sufficient to demonstrate that Persike, Kratz, Schwenn, Norge, or Cartegena were deliberately indifferent to a substantial risk of serious harm. After LaBrec stated that he did not feel safe, Persike engaged Craft to move LaBrec to a different cell. LaBrec does not explain how Persike was deliberately indifferent to LaBrec's complaints, much less a substantial risk of serious harm. LaBrec never asked Kratz to move him; rather, he asked to speak with psychological services, and Kratz called to get someone to LaBrec's cell. Schwenn, too, attempted to help LaBrec. Schwenn asked LaBrec what she could do for him, but when LaBrec could not explain why, specifically, he needed to be moved, Schwenn declined to assist further. LaBrec does not explain how Schwenn should have known that he needed to be moved or how she "effectively condone[d] the attack[.]" *Id.* LaBrec does allege that he specifically told Norge that McNeely had a history of being violent toward cellmates, but Norge took that information and attempted to get CCI staff to move LaBrec. Finally, LaBrec never asked Cartegena for help. Cartegena played no role in assigning RH-2 cellmates, and all he knew was that LaBrec preferred to share a cell with other inmates. LaBrec has failed to state an Eighth Amendment claim against these defendants: he has not

alleged any facts that suggest that these defendants were deliberately indifferent to a substantial risk of serious harm.

I will also dismiss defendant Michael Dittman, CCI warden. LaBrec contends that Dittman is responsible for developing, implementing, and enforcing policies at CCI and for ensuring inmate safety. But he does not explain how Dittman was involved in LaBrec's situation or that he knew that McNeely posed a substantial risk of serious harm to LaBrec. *See Doyle v. Camelot Care Ctrs., Inc.*, 305 F.3d 603, 614 (7th Cir. 2002) ("It is well-established that a plaintiff only may bring a § 1983 claim against those individuals personally responsible for the constitutional deprivation.").

## ORDER

IT IS ORDERED that:

1. Plaintiff Matthew LaBrec is GRANTED leave to proceed on Eighth Amendment failure to protect claims against defendants Sgt. Chatman, Sgt. Craft, CO Wilson, CO Meeker, and Lindsay Walker.
2. Plaintiff's claims against defendants Michael Dittman, CO Kratz, Dr. Norge, Dr. Persike, Dr. Schwenn, and Lt. Cartegena are DISMISSED.
3. 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 Sgt. Chatman, Sgt. Craft, CO Wilson, CO Meeker, and Lindsay Walker. Plaintiff should not attempt to serve defendants 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 defendants.
4. 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.

5. 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.
6. 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 are unable to locate him, his case may be dismissed for his failure to prosecute it.

Entered January 4, 2017.

BY THE COURT:

/s/

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JAMES D. PETERSON  
District Judge