

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

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JAMONTE ALLGOOD,

Plaintiff,

v.

CO SGT. HERT, CO WEYCKER, CO PEOTTER,  
RN CASSANDRA BAIER, LT. CUSHING, CO DENIAL,  
WARDEN SCOTT ECKSTEIN, CAPTAIN BRANT,  
LUSTEY, DEPUTY WARDEN SCHUELLER and  
JOHN KIND,

Defendants.  
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OPINION AND ORDER

17-cv-812-bbc

Pro se plaintiff Jamonte Allgood is incarcerated at the Green Bay Correctional Institution. He filed this proposed civil action under 42 U.S.C. § 1983, contending that staff at the Green Bay Institution violated his constitutional rights by using excessive force against him, failing to provide him adequate medical treatment and subjecting him to harsh conditions of confinement. Because plaintiff is incarcerated, his complaint must be screened under 28 U.S.C. § 1915A. After reviewing the complaint, I conclude that plaintiff may proceed with claims under the Eighth Amendment that defendants CO Sgt. Hert, CO Weycker, CO Peotter and CO Denial used excessive force against him or failed to intervene to prevent the use of excessive force and defendant RN Cassandra Baier failed to provide him adequate medical treatment.

Plaintiff alleges the following facts in his complaint.

### ALLEGATIONS OF FACT

Plaintiff Jamonte Allgood is incarcerated at the Green Bay Correctional Institution. In July 2017, plaintiff was in the library asking for a pen. Defendants Poetter and Weycker, correctional officers, and defendant Hert, a sergeant, responded by grabbing plaintiff by the neck, throat and head and dragging him down the hall. The officers later beat him and defendant Weycker “busted” plaintiff’s finger, causing him to bleed profusely. Defendant CO Denial was present and filmed the incident. Defendant Cassandra Baier, a registered nurse, came to see him but refused to give him ice or treatment for his injuries. Plaintiff was then placed on “control status” and taken to a “freezing cold” cell that had no light, desk, mirror, emergency intercom button, smock or blanket.

### OPINION

Plaintiff’s allegations may be organized into three categories: (1) excessive force; (2) denial of adequate medical care; and (3) failure to provide humane living conditions. I discuss each legal theory below.

#### A. Excessive Force

Claims for excessive force in the prison context are governed by the Eighth Amendment. The Eighth Amendment prohibits the “unnecessary and wanton infliction of

pain” on prisoners. Hudson v. McMillian, 503 U.S. 1, 5 (1992); Estelle v. Gamble, 429 U.S. 97, 102-03 (1976). The factors relevant to deciding whether an officer used excessive force include: the need for the application of force; the relationship between the need and the amount of force that was used; the extent of the 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; and any efforts made to temper the severity of a forceful response. Whitley v. Albers, 475 U.S. 312, 320-21 (1986).

Plaintiff alleges that after he asked for a pen, defendants Poetter, Weycker and Hert responded by grabbing plaintiff by the neck, throat and head and dragging him down the hall, beating him and breaking his finger. These allegations are sufficient to state a claim of excessive force. Thus plaintiff may proceed with excessive force claims against Poetter, Weycker and Hert. He may also proceed with a failure to intervene claim against defendant Denial, based on his allegations that Denial was present during the incident but continued filming the incident instead of intervening to prevent or stop the excessive force. At summary judgment or trial, however, plaintiff will have to prove that Denial could have acted to prevent any excessive force used against plaintiff. Minix v. Canarecci, 597 F.3d 824, 833-34 (7th Cir. 2010)(“[I]ndividual liability under § 1983 requires personal involvement in the alleged constitutional deprivation.”) (internal quotation omitted).

#### B. Conditions of Confinement

Plaintiff next contends that defendants violated his right to humane living conditions

by removing his clothes and placing him in a “freezing cold” cell that had no light, desk, mirror, emergency intercom button, smock or blanket. Prison officials violate the constitution if they are “deliberately indifferent to adverse conditions that deny ‘the minimal civilized nature of life’s necessities.’” Farmer, 511 U.S. at 825. “[C]onditions of confinement, even if not individually serious enough to work constitutional violations, may violate the Constitution in combination when they have ‘a mutually enforcing effect that produces the deprivation of a single, identifiable human need.’” Budd v. Motley, 711 F.3d 840, 842-43 (7th Cir. 2013) (citation omitted).

Plaintiff’s allegations are not sufficient to state a claim for unconstitutional conditions of confinement because he has not specified the length of time for which he was held on “control status” in a cold cell without clothing. Dixon v. Godinez, 114 F.3d 640, 642 (7th Cir. 1997) (duration of cold relevant to Eighth Amendment analysis). If plaintiff was held in the cell for a brief period of time only, it is likely that he cannot state a conditions of confinement claim. Additionally, plaintiff has failed to identify any particular defendant who was allegedly aware of the conditions of his confinement, had the authority to take steps to address them and failed to do so. For these reasons, plaintiff cannot proceed with a conditions of confinement claim.

### C. Medical Care

Finally, plaintiff contends that defendant Nurse Baier failed to provide him ice or treatment for the injuries caused by the officers’ alleged excessive force. A prison official

may violate the Eighth Amendment if the official is “deliberately indifferent” to a “serious medical need.” Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). A “serious medical need” may be a condition that a doctor has recognized as needing treatment or one for which the necessity of treatment would be obvious to a layperson. Johnson v. Snyder, 444 F.3d 579, 584-85 (7th Cir. 2006). The condition does not have to be life threatening. Id. A medical need may be serious if it “significantly affects an individual’s daily activities,” Gutierrez v. Peters, 111 F.3d 1364, 1373 (7th Cir. 1997), if it causes significant pain, Cooper v. Casey, 97 F.3d 914, 916-17 (7th Cir. 1996), or if it otherwise subjects the prisoner to a substantial risk of serious harm, Farmer v. Brennan, 511 U.S. 825 (1994). “Deliberate indifference” means that the officials are aware that the prisoner needs medical treatment, but disregard this need by consciously failing to take reasonable measures. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir. 1997).

Consistent with this standard, plaintiff’s medical treatment claims have three elements: (1) Did plaintiff need medical treatment?; (2) Did defendants know that plaintiff needed treatment?; and (3) Despite their awareness of the need, did defendants consciously fail to take reasonable measures to provide the necessary treatment?

Plaintiff’s allegations that he was bleeding, his finger was “busted” and he was hurting all over are sufficient to support an inference that he had a serious medical need. Additionally, his allegation that defendant Baier failed to provide him ice or treatment for his injuries is sufficient to support an inference of deliberate indifference. Accordingly, he can proceed with an Eighth Amendment claim against Baier.

#### D. Remaining Defendants

Plaintiff includes several other defendants in the caption of his complaint, but his allegations are not sufficient to support any claim against them. In particular, plaintiff has not alleged that defendants Lt. Cushing, Warden Scott Eckstein, Captain Brant, Lustey, Deputy Warden Schueller and John Kind caused his injuries, could have intervened to prevent them, or otherwise violated his rights. Therefore, I will dismiss these defendants from the case.

#### ORDER

IT IS ORDERED that

1. Plaintiff Jamonte Allgood is GRANTED leave to proceed on claims under the Eighth Amendment that defendants CO Sgt. Hert, CO Weycker, CO Peotter and CO Denial used excessive force against him or failed to intervene to prevent excessive force and that defendant RN Cassandra Baier failed to provide him adequate medical treatment.

2. Plaintiff is DENIED leave to proceed on any other claim. Defendants Lt. Cushing, Warden Scott Eckstein, Captain Brant, Lustey, Deputy Warden Schueller and John Kind are DISMISSED from this case.

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 the 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.

4. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to the defendants or to defendants' attorney. For the time being, plaintiff must send the defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing the defendants, he should serve the lawyer directly rather than the defendants.

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.

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 failure to prosecute.

Entered this 3d day of January, 2018.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge