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

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JACOB BAILEY,

OPINION and ORDER

Plaintiff,

17-cv-943-bbc

v.

JOHN WIENANDT, BRUCE SUNDE,
JAMES JOHNSON, NATASHA CORNELEUS,
GREG PEHLKE, MARY JO CHIZEK, KARRI GORTON,
LINCOLN HILLS SCHOOL FOR BOYS, WISCONSIN
DEPARTMENT OF CORRECTIONS and WISCONSIN
DEPARTMENT OF CORRECTIONS DIVISION OF JUVENILE
CORRECTIONS,

Defendants.

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Plaintiff Jacob Bailey, represented by counsel, filed this proposed civil action under 42 U.S.C. § 1983, contending that staff at the Lincoln Hills School for Boys in Irma, Wisconsin, violated his constitutional rights by using excessive force against him, subjecting him to an unnecessary strip search and failing to provide him adequate medical treatment after breaking his arm. Because plaintiff was incarcerated at Stanley Correctional Institution at the time he filed this case, his complaint must be screened under 28 U.S.C. § 1915A. After reviewing the complaint, I conclude that plaintiff may proceed with Eighth and Fourteenth Amendment claims against defendants John Wienandt, James Johnson, Natasha Corneleus, Greg Pehlke, Mary Jo Chizek and Karri Gorton. However, I am dismissing plaintiff's claims against defendant Bruce Sunde for failure to state a claim upon which relief may be granted. I am also

dismissing the Lincoln Hills School for Boys, Wisconsin Department of Corrections and Wisconsin Department of Corrections Division of Juvenile Corrections because these defendants are not "persons" who may be sued under § 1983. Finally, because defendants' counsel has already appeared and filed an answer to plaintiff's complaint, I will give defendants the opportunity to file an amended answer in light of this screening order, if they choose to do so.

Plaintiff alleges the following facts in his complaint.

ALLEGATIONS OF FACT

At all times relevant to his complaint, plaintiff Jacob Bailey was a juvenile inmate residing at the Lincoln Hills School for Boys in Irma, Wisconsin. He has mental health problems and was on various medications while housed at Lincoln Hills. Defendants were all employed at Lincoln Hills. John Wienandt, James Johnson, Natasha Corneleus, Mary Jo Chizek and Karri Gorton were correctional officers; Greg Pehlke was a youth counselor; and Bruce Sunde was the security director.

On the evening of March 12, 2014, plaintiff began banging on his cell door with his feet and hands. Plaintiff was not taking his medication for attention deficit hyperactivity disorder at the time. Staff told plaintiff to stop pounding on his door, and defendant Johnson arrived and told plaintiff he would need "ice for wounds that he is about to receive." Defendant Corneleus instructed defendants Johnson, Wienandt and others to enter plaintiff's cell while defendant Chizek waited outside the cell.

Defendants Johnson and Wienandt entered the cell and forced plaintiff onto his hands and knees in the corner of his cell. They told plaintiff they were going to knock out

his teeth and ordered him to apologize for covering his cell camera with toilet paper. Johnson and Wienandt then climbed on top of plaintiff and twisted both of his arms behind his back. This continued for several minutes and plaintiff began to cry. Johnson and Wienandt called plaintiff a "little bitch" and told him to stop crying. After several minutes, Johnson and Wienandt removed plaintiff's clothes.

After plaintiff's clothes were removed, defendant Pehlke, a youth counselor, entered the cell and performed a strip search of plaintiff, allegedly to look for a screw. No screw was found. After the strip search, plaintiff was forced to sit in the corner of his cell with no belongings, bedding or clothes for several hours. Defendant Gorton was responsible for returning plaintiff's belongings, but she delayed doing so for several hours.

Plaintiff asked for medical assistance for his arm but received none, even for icing his injury. More than a week later, on March 21, 2014, plaintiff was taken to the hospital, where it was determined that his left wrist and arm were fractured. Plaintiff's arm was placed in a cast. He has suffered permanent injury to his left arm.

OPINION

A. Improper Defendants

At the outset, I will dismiss the Lincoln Hills School for Boys, Wisconsin Department of Corrections and Wisconsin Department of Corrections Division of Juvenile Corrections as defendants. Lincoln Hills is merely a building and not an entity that can be sued under 42 U.S.C. § 1983. Smith v. Knox County Jail, 666 F.3d 1037, 1040 (7th Cir. 2012).

Similarly, the Department of Corrections and Division of Juvenile Corrections are not "persons" for purposes of § 1983. Will v. Michigan Department of State Police, 491 U.S. 58 (1989).

B. Excessive Force

Plaintiff contends that defendants used excessive force against him. The precise standard for his excessive force claim is unclear, because it appears that plaintiff was a juvenile detainee when the underlying events occurred. An adjudication of juvenile delinquency in Wisconsin "is not a conviction of a crime." Wis. Stat. § 938.35(1).

One of two standards will apply. The first option is the standard that applies to convicted prisoners. "The 'unnecessary and wanton infliction of pain' on a [convicted] prisoner violates his rights under the Eighth Amendment." Lewis v. Downey, 581 F.3d 467, 475 (7th Cir. 2009). To prevail on an Eighth Amendment excessive force claim, a convicted prisoner must prove that the offending officer applied force "maliciously and sadistically for the very purpose of causing harm," rather than "in a good faith effort to maintain or restore discipline." Hudson v. McMillian, 503 U.S. 1, 6-7 (1992) (quoting Whitley v. Albers, 475 U.S. 312, 320-21 (1986)). The factors relevant to this determination include: (1) why force was needed; (2) how much force was used; (3) the extent of the injury inflicted; (4) whether the defendant perceived a threat to the safety of staff and prisoners; and (5) whether efforts were made to temper the severity of the force. Whitley, 475 U.S. at 321. The second option is the standard that applies to pretrial detainees, who are not convicted prisoners and

need not prove the defendant's subjective state of mind to prove an excessive force claim under the Fourteenth Amendment; pretrial detainees need only show that the force used was "objectively unreasonable." Kingsley v. Hendrickson, 135 S. Ct. 2466, 2473 (2015).

Plaintiff's allegations are sufficient to satisfy either standard: he alleges that defendants Johnson and Wienandt climbed on his back and twisted his arm until it broke, solely because he was banging on his cell door and may have covered his cell camera with toilet paper. I will grant plaintiff leave to proceed on an excessive force claim against Johnson and Wienandt. As the case proceeds, the parties should set forth their positions as to which legal standard applies to plaintiff's excessive force claim.

Additionally, although plaintiff identifies defendants Johnson and Wienandt as the subjects of his excessive force claim in paragraph VI of his complaint, plaintiff also alleges that defendants Corneleus and Chizek were present and did not intervene to stop the excessive force and acted with deliberate indifference to his safety. Plt.'s Cpt., dkt. #1, ¶ 47. Therefore, I will permit him to proceed with failure to intervene claims against defendants Corneleus and Chizek. At summary judgment or trial, plaintiff will have to prove that Corneleus and Chizek could have acted to prevent any excessive force used against him. 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).

C. Strip Search

Plaintiff next contends that defendants Pehlke, Johnson and Wienandt violated his constitutional rights by conducting an unnecessary and humiliating strip search of him. A strip search may violate the constitution if it is conducted with the "inten[t] to humiliate the victim or gratify the assailant's sexual desires." Washington v. Hively, 695 F.3d 641, 643 (7th Cir. 2012); Gillis v. Pollard, 554 Fed. Appx. 502, 505 (7th Cir. 2014). Plaintiff alleges that he was forced down on his hands and knees, called a "little bitch," strip searched and then left for hours in his cell without clothing or other belongings. These allegations are sufficient to permit an inference that the strip search was conducted to harm or humiliate plaintiff, rather than for legitimate security reasons. Therefore, plaintiff may proceed with this claim against defendants Pehlke, Johnson and Wienandt. As with plaintiff's excessive force claim, the parties should consider and brief the appropriate legal standard that applies to a claim brought by a juvenile detainee challenging a strip search.

D. Medical Care

Plaintiff contends that all defendants violated his constitutional rights by failing to provide him treatment for more than a week after Johnson and Wienandt broke his arm. In the context of medical care claims, the Court of Appeals for the Seventh Circuit has stated that the Fourteenth and Eighth Amendment standards are essentially the same. Smego v. Mitchell, 723 F.3d 752, 756 (7th Cir. 2013). A plaintiff states a claim for violation of his right to adequate medical care if his allegations suggest that a prison official acted with

"deliberate indifference" to a "serious medical need." Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). Plaintiff's allegations that he had a broken arm and was denied treatment for a week are sufficient to state a claim of deliberate indifference. Plaintiff may proceed with this claim against defendants Johnson, Wienandt, Corneleus, Chizek, Gorton and Pehlke because he alleges that each was present when he was injured or, in the case of Gorton, became aware of the situation later, but failed to provide him any treatment for his injuries. However, plaintiff may not proceed against defendant Sunde on this claim because he has not alleged that Sunde was present or aware of plaintiff's injury or in a position to obtain treatment for plaintiff.

E. Defendant Sunde

Plaintiff's complaint includes no specific allegations against defendant Sunde, beyond stating that Sunde was the security director at Lincoln Hills. Plaintiff alleges in a conclusory manner that his injuries were caused by inadequate or flawed policies, training and supervision, Plt.'s Cpt., dkt. #1, ¶ 47, but these allegations are too vague to state any claim against Sunde or anyone else. Therefore, I will dismiss Sunde as a defendant.

ORDER

IT IS ORDERED that

1. Plaintiff Jacob Bailey is GRANTED leave to proceed on claims that

a) defendants John Wienandt and James Johnson used excessive force against him and

defendants Natasha Corneleus and Mary Jo Chizek failed to intervene to stop the excessive force from occurring;

b) defendants Wienandt, Johnson and Greg Pehlke subjected plaintiff to an unlawful strip search; and

c) defendants Wienandt, Johnson, Corneleus, Chizek, Pehlke and Gorton failed to provide plaintiff with adequate medical care for his broken arm.

2. Plaintiff is DENIED leave to proceed on any other claim. Defendants Bruce Sunde, Lincoln Hills School for Boys, Wisconsin Department of Corrections and Wisconsin Department of Corrections Division of Juvenile Corrections are DISMISSED.

3. Defendants may have 21 days from the date of this order to file an amended answer to plaintiff's complaint, if they choose to do so.

Entered this 8th day of February, 2018.

BY THE COURT:

/s/

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BARBARA B. CRABB
District Judge