

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

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DONALD WHITE,

Plaintiff,

v.

SGT. HOFFMAN, OFFICER WEIGEL,
OFFICER L. BROWN, and SGT.
BOWDY,

Defendants.

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OPINION AND ORDER

01-C-0600-C

This is a civil action brought by plaintiff Donald White, an inmate at the Supermax Correctional Institution in Boscobel, Wisconsin. Plaintiff contends that he was subjected to cruel and unusual punishment in violation of the Eighth Amendment when defendants Officer Weigel, Officer L. Brown and Sgt. Bowdey beat him with a plastic box sadistically and maliciously for the mere purpose of causing him harm and not for any legitimate penological reason. He alleges that defendant Sgt. Hoffman stood by, watching, without making any effort to stop the beating. Defendants do not deny that they caused plaintiff some minor injuries while attempting to force his arm back into his cell but they say that

their actions were taken only because plaintiff refused to withdraw his arm from the trap of his door where it presented a safety and security threat to staff and to the institution.

The case is before the court on defendants' motion for summary judgment and on plaintiff's motion to strike his disciplinary reports that are marked as exhibits to the affidavit of Ellen K. Ray, filed in support of defendants' motion for summary judgment. Defendants concede that the descriptions of the incidents set forth in the conduct reports should be stricken. They argue, however, that the court should consider the information setting forth the specific disciplinary code violation charged against plaintiff as well as the findings of guilty or not guilty. Plaintiff's motion will be granted as to the descriptions of the incidents. I will take into consideration the remainder of the disciplinary reports, but only insofar as they support a finding that plaintiff has received numerous disciplinary reports during his stay at the institution. As to defendants' motion for summary judgment, I conclude that plaintiff has failed to submit evidence that would permit a jury to find in his favor on his claim that he was subjected to constitutionally excessive force. Therefore, I will grant the motion. (Plaintiff has filed a document he titles as a motion to oppose defendants' motion for summary judgment. It is not necessary for him to file a motion in order to oppose the motion. I will consider the "motion" as additional argument in opposition to defendants' motion.)

From the facts proposed by plaintiff and by defendants, I find that the following are

undisputed and relevant.

UNDISPUTED FACTS

Plaintiff Donald White is an inmate of the Supermax Correctional Institution and was incarcerated there at all relevant times. Defendant Keith Wiegel was employed as a correctional officer at the institution at all relevant times, as was defendant Lebbeus Brown. Defendant J. Hoffman was employed as a correctional officer/sergeant at the institution; defendant Robert Bowdey was employed as a sergeant.

Plaintiff has been housed in the Alpha Unit (intake and segregation) for approximately one and a half years. He has received numerous conduct reports for disruptive, assaultive, aggressive, destructive, violent and threatening behavior.

On February 6, 2001, plaintiff was on a back of cell restriction, requiring him to remain in the back of his cell when correctional officers brought food or medication to his cell door. The procedure for delivering medication to an inmate on this restriction involves two officers. One watches the inmate to insure his compliance with the restriction while the other holds a plastic medication pass box in the trap until the inmate removes the medication, consumes it and returns to the back of the cell. Then the box is removed from the trap and the trap is shut. (The medication box is designed to fit snugly into the trap.)

When defendant Bowdey arrived at plaintiff's cell on February 6, plaintiff was upset

that he had not received a snack bag. Plaintiff had his hand or arm through the trap. Defendant Bowdey ordered him repeatedly to remove it and pull it back into the cell. When he refused, defendants Bowdey, Brown and Wiegel used the medication box to try to push plaintiff's arm back into his cell. At the time, they believed that plaintiff would keep his arm in the trap, preventing it from being closed, and that he would pose a danger to staff if he did so. With his arm out, he might be able to grab or assault staff or throw things on them.

Although defendants Bowdey, Brown and Wiegel made vigorous efforts to force plaintiff to pull his arm back into the cell, he did not withdraw it from the trap until an officer appeared at the cell door with an electronic stun shield and displayed it to plaintiff as a show of force. (Plaintiff gives another version of the events. He says that he pulled his arm back in when Lt. Gilberg showed up and told him to do so. In his version, the stun shield did not show up until after plaintiff refused to take his medication in the presence of staff, at which point Gilberg returned to the cell with a cell entry team carrying a stun shield, to retrieve plaintiff's medication from his cell. However, plaintiff stated in his proposed findings of fact, dkt. #30, ¶¶ 17-19, that he did not dispute defendants' proposed findings of fact #52 - #60, other than to deny that it was Sgt. Bowdey who brought the stun shield to his cell. According to defendants' proposed findings of fact, dkt. #18, #52 -#60, plaintiff withdrew his arm back into the cell only after he saw the stun shield. Any discrepancy

between the two versions is immaterial; it is undisputed that plaintiff did not withdraw his arm from the trap when defendants ordered him to do so.)

The medical records report that on February 6, 2001, plaintiff incurred

small abrasions to arm. On the ® hand, there are two small open areas, there are three to four superficial scratches ċ small amount of bleeding around the elbow, and two to three small open areas on the upper ® arm.

Plt.'s Affid., Exh. #1, dkt. #32, at 2.

Institution policy does not permit inmates to hold their cell traps hostage, by keeping their hands or arms in them and preventing them from being closed. The purpose is to prevent inmates from grabbing and assaulting staff, throwing things at staff or spitting at them. Inmates are permitted to place their arms through the trap only when they are being restrained or having their wrist restraints removed.

OPINION

The Eighth Amendment prohibits the “unnecessary and wanton infliction of pain” on inmates of correctional institutions. Hudson v. McMillian, 503 U.S. 1, 5 (1992). In determining what is “unnecessary and wanton,” courts inquire whether “force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” Id. at 7. The Court of Appeals for the Seventh Circuit has suggested that in making this inquiry, courts examine “the need for the application of force, the relationship

between that need and the force applied, the threat reasonably perceived by the responsible officers, the efforts made to temper the severity of the force employed, and the extent of the injury suffered by the prisoner.” DeWalt v. Carter, 224 F.3d 607, 619 (7th Cir. 2000) (citing Hudson, 503 U.S. at 7).

Plaintiff’s version of what happened on February 6, 2001, is that he was angry about being denied a snack and put his hand out through the trap simply as a means to attract defendant Bowdey’s attention so Bowdey could notify the unit sergeant and obtain plaintiff’s snack. At that point, plaintiff alleges, defendants Brown, Wiegel and Bowdey began beating and smashing his hand with the plastic medication box, trying to force it back into the cell without having to take the time to notify the unit sergeant or a supervisor; the beating and smashing caused him lacerations, bruises and swelling for which he was denied medical attention; and defendant Hoffman stood by and watched the entire incident, smiling.

Defendants’ version is that they used the plastic medication box as a means of forcing plaintiff’s hand back into the cell. It is undisputed that plaintiff had his hand through the trap, although he says he did so in order to get defendant Bowdey’s attention and defendants say he had it in the trap, trying to push the medication box out. It is undisputed that plaintiff was angry at the time and that he refused to obey the officers’ directive to pull his hand back into the cell. Thus, the only dispute is between plaintiff’s version that defendants

hit him maliciously with the plastic medication box and defendants' version that they used the box to try to keep plaintiff's hand from coming out through the trap or to push it back in.

This dispute is not enough to create an issue for the jury. It is undisputed that plaintiff was disobeying prison regulations, whether he put his hand out to signal the officer or put his hand in the trap in an effort to force the medication box out. It is undisputed that he refused to withdraw his hand, despite orders to do so. Therefore, the first factor is satisfied: the officers needed to use force to get plaintiff's hand back into the cell. Plaintiff argues that they could have used other approaches, such as calling supervisory personnel. He does not say why he would have listened to supervisory personnel when he refused to listen to the officers in front of him or what defendants should have done with him while they waited for a supervisor to arrive. He does not address the fact that it is the front line officers that have been assigned the initial responsibility for maintaining order and safeguarding the safety of staff and inmates or explain how they can do their jobs if they cannot resort to any use of force in circumstances in which they believe it is necessary.

The second factor is the relationship between the need for force and the force actually applied. It is undisputed that force was needed because plaintiff refused to comply voluntarily with defendants' orders and that the force used did not cause plaintiff any significant injury. Even if plaintiff's version of the facts is accepted, he could not prove that

defendants used force out of proportion to the threat he posed. How much force could it have been if it was not enough to persuade him to pull in his hand?

The third factor focuses on the efforts made to temper the severity of the force employed. If plaintiff's version is accepted, the beating continued until Lt. Gilberg showed up. By calling in a supervisory officer, defendants demonstrated their willingness to put an end to the application of force if plaintiff would comply with their directives. If defendants' version is relied upon, defendants called in a stun shield in order to stop the struggle over the medication box, thus demonstrating their efforts to "temper the severity" of the struggle.

Finally, the minor nature of the injury that plaintiff suffered is strong evidence that defendants did not subject him to unnecessary force. Although it is not necessary for a plaintiff to demonstrate a significant injury to state a claim for excessive force, the general rule is that such a claim cannot be predicated on a minimal use of physical force. Outlaw v. Newkirk, 259 F.3d 833, 838 (7th Cir. 2001) (citing DeWalt, 224 F.3d at 620). See also Hudson, 503 U.S. at 9-10 ("the Eighth Amendment's prohibition of cruel and unusual punishments necessary excludes from constitutional recognition *de minimis* uses of physical force, provided that the use of force is not of a sort repugnant to the conscience of mankind"). Hitting an inmate's hand with a plastic box when he is resisting lawful orders might be stupid or ineffectual but it is not the sort of force that would stir the conscience of the average person.

All of the relevant factors weigh in defendants' favor. No reasonable jury could find that plaintiff was subjected to unnecessary force when he refused to withdraw his hand from the trap of his cell door. Therefore, defendants' motion for summary judgment will be granted.

ORDER

IT IS ORDERED that the motion for summary judgment filed by defendants Sgt. Hoffman, Officer Weigel, Officer L. Brown and Sgt. Bowdey is GRANTED and plaintiff Donald White's motion to strike the descriptive portion of the disciplinary reports filed by defendants is GRANTED. The clerk of court is directed to enter judgment for defendants and close this case.

Entered this 12th day of June, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge