IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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JEFFREY JON BONNIN,

OPINION AND ORDER

Plaintiff,

03-C-0065-C

v.

EAU CLAIRE COUNTY,
WILLIAM R. BOELKE,
KEVIN J. OTTO,
JONATHAN J. PENDERGAST,
MICHAEL P. MAYER and
SHEILA A. BLANAS,

Defendants.

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This is a civil case brought pursuant to 42 U.S.C. § 1983, in which plaintiff Jeffrey Jon Bonnin contends that defendants William R. Boelke (correctly, Boehlke), Kevin J. Otto, Jonathan J. Pendergast, Michael P. Mayer and Sheila A. Blanas violated the United States Constitution by using excessive force against him and being deliberately indifferent to his serious medical needs when he was confined at the Eau Claire County jail. Plaintiff contends that defendant Eau Claire County's unconstitutional custom, policy or practice violated his rights as well. Defendants have moved for summary judgment, arguing that as a matter of

law, they used no more force than was reasonably necessary under the circumstances, that plaintiff displayed no signs of serious medical need that they ignored and that the Eau Claire County jail policies are constitutional.

Plaintiff has failed to adduce any evidence from which a jury could find that the force defendants used excessive force against him at the Eau Claire County jail, that defendants ignored his serious medical needs or that any custom, policy or practice of the county violated his constitutional rights. Accordingly, I will grant defendants' motion for summary judgment.

Plaintiff was given an opportunity to respond to defendants' motion. Instead of doing so, he filed a motion to dismiss the case voluntarily, without prejudice. Because defendants had filed a dispositive motion, I told plaintiff that I would allow dismissal of the case only if it were with prejudice. I gave plaintiff a time limit for advising the court and opposing counsel whether he would agree to a dismissal with prejudice or would oppose the motion to dismiss. In response, plaintiff filed a motion that I construed as one to withdraw his motion for dismissal and for appointment of counsel. Accompanying the motion were a brief in response to summary judgment and a response to defendants' proposed findings of fact. I granted the motion to withdraw the dismissal motion and denied the motion for appointment of counsel. I told plaintiff that I would not consider his response to defendants' proposed findings of fact because it was filed well after the deadline set by the

court and it did not conform to this court's procedures for summary judgment, a copy of which had been sent to plaintiff on May 29, 2003.

In finding the undisputed facts, I have not considered the findings in opposition that plaintiff has proposed. I find from defendants' unopposed proposals that the following facts are material and undisputed.

UNDISPUTED FACTS

Plaintiff Jeffrey J. Bonnin is an inmate at the Columbia Correctional Institution. Defendant Eau Claire County is a municipal unit of government in the state of Wisconsin. Defendants William R. Boehlke, Kevin J. Otto, Jonathan J. Pendergast, Michael P. Mayer and Sheila A. Blanas are corrections officers employed by defendant Eau Claire County at the county jail.

On November 11, 2003, plaintiff was brought from the Wisconsin Resource Center to the Eau Claire County jail for the purpose of making a court appearance in the Circuit Court for Eau Claire County on November 12. Defendant Otto booked plaintiff into the jail at approximately 5:20 p.m. Plaintiff was generally calm while being booked. He cooperated with defendant Otto in answering questions about his medical condition. Plaintiff told Otto he had "angina-heart disorder" and a right ankle condition. He said he

was taking prescription medicine but did not have it with him and could not provide details about the prescription. He told Otto he had seen a medical doctor on only one occasion during the preceding year and only for his ankle.

Plaintiff was sent to Cell Block F after his booking. At about 6 p.m., plaintiff called defendant Boehlke on the intercom and asked Boehlke to close his cell door so he could use the toilet. Boehlke was on duty just outside Cell Block F at the jail's main desk. Boehlke told plaintiff that jail policy did not permit him to close cell doors so that inmates could use the toilet in privacy. Plaintiff became angry, told Boehlke that he was a state inmate, that he did not have to follow the jail rules and that Boehlke should "fucking" close the door.

Defendant Boehlke told plaintiff that the rule had no exceptions. Plaintiff became enraged and started cursing loudly. Boehlke told plaintiff to calm down and go to his assigned cell.

Plaintiff went to the door of his cell but became angrier when he saw that the cell did not contain a mattress. Defendant Boehlke told plaintiff that locked down inmates in Cell Block F did not get their mattresses until 8 p.m. Plaintiff resumed his cursing. Defendant Boehlke became concerned about the disturbance plaintiff was causing.

According to Eau Claire County jail policy, officers are to respond to inmate threats to jail security by taking the following steps: (a) voice commands; (b) securing the inmate's person if he is creating a risk; (c) locking down the cell block to prevent other inmates from

becoming involved in the disturbance or getting injured; (d) asking for assistance from other officers; and (e) having all responding officers enter the cell block together in a show of force. Boehlke directed all inmates to lock themselves down in their cells. Every inmate except plaintiff complied.

Defendant Boehlke called for assistance and called for a general alarm. Defendants Mayer, Pendergast and Otto responded; defendant Blanas was already at the cell block when plaintiff started his disturbance. As the highest ranking officer, defendant Mayer took command. He learned from defendant Boehlke that plaintiff had refused to comply with Boehlke's directive to go into his cell.

Defendants entered Cell Block F together while plaintiff stood his ground, facing them. Defendant Mayer asked plaintiff to turn around and place his hands behind his back to be handcuffed so he could be transferred off the cell block. Plaintiff refused and remained in a defensive posture, trying to keep the officers away from him. Defendant Meyer took out his pepper spray and told plaintiff again to turn around to be handcuffed, warning plaintiff that he would be sprayed if he continued to resist. Plaintiff denied that he was resisting and that defendants had any authority to spray him.

Subsequently, plaintiff gave signs of compliance with defendant Mayer's command until Mayer directed defendant Pendergast to handcuff him. At that point, plaintiff turned his body and moved his arms away. Defendant Mayer sprayed plaintiff in the face with the

pepper spray. Plaintiff reacted violently by flailing his arms at the officers. He continued to resist. Other officers took his feet out from under him to get him to the cell block floor. Plaintiff continued to resist and defendant Mayer shot a second burst of pepper spray in his face to get him to stop resisting. Only then could the officers handcuff plaintiff and get him on his feet again.

Defendants Mayer and Otto escorted plaintiff from Cell Block F to a padded holding cell for administrative confinement away from the other inmates. As they approached the cell, plaintiff lunged at defendants with his head and struck the door jamb. Defendants managed to get plaintiff through the door and to remove his handcuffs, but he remained uncooperative.

Although the effects of pepper spray usually last only about 45 minutes, it is jail policy to have officers use cool water on affected parts of the inmate's body as soon as it is safe for them to do so. Because plaintiff continued to resist and remained agitated, defendant Mayer believed that it was unsafe for any jail officer to try to ameliorate the effects of the spray on plaintiff. However, he offered to provide plaintiff a moistened towel and washcloth so that he could clean himself up. Plaintiff refused the offer.

During or shortly after the spraying, plaintiff complained that he had shortness of breath and that his chest was hurting because he had inhaled some of the spray. Officers monitored his condition. They heard no more complaints after he had calmed down. They

did not administer any medicine to him because he had brought none with him and the jail staff had not had time to verify his assertion that he was on medication.

When the evening meal was served, plaintiff ate what was served to him and displayed no evidence of distress. Defendant Boehlke prepared a written Inmate Conduct Report, summarizing the incident. He provided a copy to plaintiff, who refused to review or sign the report. Plaintiff did not appeal his administrative confinement.

OPINION

At the outset I note that plaintiff is confined by the state of Wisconsin as a patient under Wisconsin's Sexually Violent Persons Law, Wis. Stat. ch. 980. As a patient detained under the civil laws, he is not a prisoner within the meaning of the Prisoner Litigation Reform Act, West v. Macht, 986 F. Supp. 1141, 1142-43 (W.D. Wis. 1997), and for that reason is not required to exhaust any administrative remedies the jail might provide. (The record does not indicate whether the Eau Claire County jail has an administrative complaint system.)

In addition, defendants have left plaintiff's status at the jail unclear. It appears that he was a pretrial detainee, in which case the Fifth Amendment's due process clause incorporated into the Fourteenth Amendment protects him "from the use of excessive force that amounts to punishment." Dorsey v. St. Joseph County Jail Officials, 98 F.3d 1527,

1528 (7th Cir. 1996) (quoting Graham v. Connor, 490 U.S. 396 (1989)). In determining whether force was excessive in a particular situation, the guiding inquiry is whether officials behaved in a reasonable way in light of the facts and circumstances confronting them. Id.; Wilson v. Williams, 83 F.3d 870, 875 (7th Cir. 1996) (citing Anderson v. Gutschenritter, 836 F.2d 346, 349 (7th Cir. 1988)).

Because plaintiff failed to adduce any evidence, the fact-based inquiry in this case is straightforward. Plaintiff objects to defendants' use of pepper spray and physical force against him but the facts show that he was uncooperative and causing a disturbance in the jail. Defendants followed jail policy and used a graduated response to the disturbance, but were forced to resort to pepper spray and physical force when plaintiff refused to accede to their voice commands and show of force. Nothing in the record indicates that defendants used force maliciously and sadistically to cause harm to plaintiff rather than in a good faith effort to restore discipline. Nothing indicates that plaintiff would be able to prove that he suffered some harm attributable to the use of force that was clearly excessive to the need or objectively unreasonable in light of the facts and circumstances of the time. Wilson, 83 F.3d at 876.

The same lack of evidence dooms plaintiff's claim that defendants disregarded his serious medical needs resulting from the administration of pepper spray. The due process clause protects plaintiff from deliberate indifference to any serious medical needs. Chavez

v. Cady, 207 F.3d 901, 904 (7th Cir. 2000) (citing Bell v. Wolfish, 441 U.S. 520 (1979)). Plaintiff cannot show that he suffered any harm beyond temporary discomfort as a consequence of either being sprayed or being denied medication. Exposure to pepper spray is not a serious medical need, but even if it were, defendants did not disregard it. Defendant Mayer offered plaintiff a washcloth to enable him to remove the spray residue but plaintiff rejected it. Plaintiff had no medication with him when he came from the Wisconsin Resource Center and no information about the kind of medication he said he took. It was not unconstitutional for defendants not to give plaintiff medication in this situation.

Plaintiff has not shown that defendant Eau Claire County had an unconstitutional policy or custom for responding to disturbances in the jail. To the contrary, it appears that the policy in place was a reasonable and measured one, designed to minimize the use of force.

ORDER

IT IS ORDERED that the motion for summary judgment filed by defendants Eau Claire County, William R. Boehlke, Kevin J. Otto, Jonathan J. Pendergast, Michael P. Mayer and Sheila A. Blanas is GRANTED. The clerk of court is directed to enter judgment for

defendants and close this case.

Entered this 13th day of January, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge