IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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TITUS HENDERSON,

Plaintiff,

v.

DAVID BELFUEIL, JUDY CHOJNACKI and KAREN LALONE,

Defendants.

OPINION AND ORDER

03-C-729-C

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This is a civil action for monetary, injunctive and declaratory relief brought under 42 U.S.C. § 1983. Plaintiff Titus Henderson, who is presently confined at the Wisconsin Secure Program Facility in Boscobel, Wisconsin, contends that defendants Judy Chojnacki and Karen Lalone violated his Eighth Amendment rights by forcing a needle in his arm. Plaintiff lodged this claim as well as others arising under the First and Fourth Amendments against several other defendants, most of whom are no longer part of this suit as a result of their successful motions for summary judgment. The only claim still pending other than plaintiff's Eighth Amendment claim against defendants Chojnacki and Lalone is his Fourth Amendment claim against defendant David Belfueil; I denied summary judgment as to that

claim because there is a factual dispute material to its outcome that must be resolved by a jury.

Now before the court are the motions for summary judgment of defendants Chojnacki and Lalone. Because the undisputed facts show that the blood test about which plaintiff complains was administered pursuant to a legitimate criminal investigation of his involvement in a prison fight and because plaintiff has not produced any evidence suggesting that in taking a sample of his blood, defendants acted with malice or intended to injure him, I will grant defendants' motions. Jurisdiction is present. 28 U.S.C. § 1331.

In support of their motions for summary judgment, both defendants Chojnacki and Lalone submitted proposed findings of fact in which they indicated that they intended to adopt and incorporate the proposed findings that the other defendants had submitted in support of their motions for summary judgment. Plaintiff objects with respect to defendant Lalone only; he contends that she cannot adopt the facts put forth by other defendants because her motion for summary judgment was not filed until after the deadline for filing dispositive motions had past. In an order dated March 8, 2005, I extended the deadline for filing dispositive motions and defendant Lalone filed her motion for summary judgment within the extended deadline.

Furthermore, adopting and incorporating the proposed findings of fact put forth by other defendants is both fair and appropriate. It saves the parties and the court time and

effort and does not deprive plaintiff of his ability to put the proposed facts into dispute. Plaintiff has already had an opportunity and incentive to identify evidence contradicting the proposed facts and he could have raised any new objections to those proposals in his submissions responding to the motions currently before the court. In any event, plaintiff has never contested the facts showing that defendants Lalone and Chojanski are entitled to summary judgment, namely that the blood draw was administered as part of a criminal investigation of plaintiff's involvement in a prison fight.

From the parties' proposed findings of fact, I find the following facts to be material and undisputed.

UNDISPUTED FACTS

At all relevant times, plaintiff Titus Henderson was incarcerated at Redgranite Correctional Institution. Defendants Judy Chojnacki and Karen Lalone were both registered nurses employed at the Redgranite facility. Occasionally, their job responsibilities include taking blood samples from inmates.

On September 18, 2002, plaintiff was involved in an altercation with Tronnie Dismuke, another inmate at the Redgranite facility. After the incident, Dismuke had blood on his finger and back. Several officers conducted a search of the shower area where the attack took place and found a pair of tweezers attached to a pen in a laundry basket.

Dismuke identified the item as the weapon plaintiff had used to strike him in the back and plaintiff denied having used the instrument. A corrections officer informed defendant David Belfueil, a detective with the Redgranite Police Department, about the fight.

On October 1, 2002, two facility guards brought plaintiff to a medical examination room. Defendant Belfueil was standing in the hallway outside of the exam room with two corrections captains, David Tarr and Scott Eckstein. As plaintiff approached the room, he asked defendant Belfueil what was happening. Defendant Belfueil explained to him that his blood was going to be drawn so that the local police could determine whose blood was on the weapon used in the altercation. Plaintiff said that he did not want to have his blood drawn and that his blood had already been drawn for DNA purposes in the past. Defendant Belfueil responded by telling plaintiff that a new blood sample was needed for the case under investigation. Within a few minutes of his arrival at the medical exam room, defendants Chojnacki and Lalone withdrew a blood sample from plaintiff's arm. The first time they inserted the needle, it did not hit plaintiff's vein so defendants had to insert the needle a second time. The parties dispute whether plaintiff was polite and cooperative during the blood draw or whether he resisted.

OPINION

Plaintiff contends that defendants violated his Eighth Amendment rights by forcing

a needle into his arm. "'[T]he unnecessary and wanton infliction of pain,'" including unnecessary use of force, constitutes cruel and unusual punishment forbidden by the Eight Amendment. Whitley v. Albers, 475 U.S. 312, 319, 320-21 (1986) (quoting Ingraham v. Wright, 430 U.S. 651, 670 (1977)); see also Calhoun v. DeTella, 319 F.3d 936, 939 (7th Cir. 2003) ("gratuitous infliction of pain always violates contemporary standards of decency"). An injury need not be serious to violate an inmate's Eighth Amendment rights if it is maliciously inflicted. Calhoun, 319 F.3d at 939 (citing Hudson v. Mcmillian, 503 U.S. 1, 9 (1992)). In granting plaintiff leave to proceed on this claim, I noted that he might be able to prove an Eighth Amendment violation but only if he could show that defendants forced a needle in his arm, drawing blood without any legitimate governmental interest and for the purpose of hurting plaintiff. However, I indicated that if defendants had a legitimate reasons for taking the blood sample, plaintiff's claim would fail. "[O]nly those [bodily] searches that are maliciously motivated, unrelated to institutional security, and hence totally without penological justification are considered unconstitutional." Whitman v. Nesic, 368 F.3d 931, 934 (7th Cir. 2004) (citations omitted).

Although I identified plaintiff's Eighth Amendment claim as one premised on a theory of gratuitous infliction of pain, defendants have framed their arguments in moving for summary judgment as though plaintiff had charged them with deliberate indifference to his serious medical needs. Specifically, they argue that plaintiff did not suffer from a "serious

medical need"; this argument is misplaced. What constitutes an injury that is sufficiently serious to invoke the Constitution is neither static nor absolute. Instead, it should be "applied with due regard for the differences in the kind of conduct against which an Eighth Amendment objection is lodged." Hudson, 503 U.S. at 8 (quoting Whitley, 475 U.S. at 320). The Supreme Court has described the difference between the injury requirement in a medical needs case and that required in the excessive force context as follows:

> Because society does not expect that prisoners will have unqualified access to health care, deliberate indifference to medical needs amounts to an Eighth Amendment violation only if those needs are "serious." In the excessive force context, society's expectations are different. When prison officials maliciously and sadistically use force to cause harm, contemporary standards of decency always are violated. This is true whether or not significant injury is evident. Otherwise, the Eighth Amendment would permit any physical punishment, no matter how diabolic or inhuman, inflicting less than some arbitrary quantity of injury. Such a result would have been as unacceptable to the drafters of the Eighth Amendment as it is today.

Id. at 9.

Although defendants' argument relating to the objective seriousness of plaintiff's injury misses the mark, their assertion that they did not act with a culpable state of mind is relevant and is sufficient to satisfy their burden to explain the basis for their motion. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986) (party moving for summary judgment bears an initial burden to inform the court of the basis for its motion). Thus, defendants' mischaracterization of plaintiff's claim is not fatal to their motion.

Upon further development of the facts, it has become clear that defendants took a

sample of plaintiff's blood not to injure or cause plaintiff pain, but to aid in a criminal investigation. "[C]entral to all other corrections goals is the institutional consideration of internal security within the corrections facilities themselves." Pell v. Procunier, 417 U.S. 817, 823 (1974); see also Rowe v. DeBruyn, 17 F.3d 1047, 1052-53 (7th Cir. 1994). In addition, there is a legitimate governmental interest in curbing criminal recidivism. Pell, 417 U.S. at 822-23 ("paramount objective of the corrections system is the rehabilitation of those committed to its custody"); Rowe, 17 F.3d at 1049. Pursuing criminal investigations of violent disturbances within prisons furthers both of these objectives.

Plaintiff suggests that somehow the fact that defendants inserted the needle into his arm twice shows that they violated his Eighth Amendment rights. By plaintiff's own admission, the reason the needle was inserted into his arm a second time was because defendant had not hit his vein the first time. Plt.'s Resp. to Defts.' PFOF, dkt. #95, 2-3, ¶ 8. He does not contend or submit evidence showing that defendants intentionally missed his vein the first time. In addition, plaintiff's argument that malicious intent can be inferred from the fact that defendants Chojnacki and Lalone are employed by a private corporation is unavailing. First, there is no evidentiary support for plaintiff's apparent assumption that they were under no obligation to take orders from facility corrections officers or defendant Belfueil. Even if the evidence did bear this out, it is not reasonable to assume that an act is malicious simply because it is voluntary. Cf. Black's Law Dictionary 1539 (7th ed. 1999)

(defining "willful" as "voluntary and intentional, but not necessarily malicious").

Although "the Eighth Amendment's prohibition against cruel and unusual punishment stands as a protection from bodily searches which are maliciously motivated [and] unrelated to institutional security," Del Raine v. Williford, 32 F.3d 1024, 1040 (7th Cir. 1994), plaintiff has not adduced evidence to show that defendants were motivated by malice in taking a blood sample from him; this appears to be nothing but unsubstantiated speculation on his part. Moreover, defendants have proved that their actions were part of a legitimate criminal investigation related to institutional security. Accordingly, I must conclude that defendants Lalone and Chojnacki are entitled to summary judgment.

ORDER

IT IS ORDERED that the motions for summary judgment of defendants Karen Lalone and Judy Chojnacki are GRANTED and these defendants are DISMISSED from this case.

Entered this 27th day of May, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge