

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

HAKIM NASEER,

Plaintiff,

v.

C/O M. MCCULLICK and
C/O J.D. FISHER,

Defendants.

ORDER

10-cv-0139-bbc

Plaintiff Hakim Naseer is proceeding against defendants M. McCullick and J.D. Fisher on his claim that McCullick used excessive force by slamming plaintiff's arm in a cell door and Fisher failed to intervene. Now before the court is plaintiff's motion for leave to amend his complaint. That motion will be granted.

Plaintiff has asked for leave to amend his complaint because, in the course of discovery, he has had the opportunity to review a video of the incident and now believes he needs to alter his complaint to avoid committing perjury. Plaintiff's proposed amended complaint changes very little. He alleges now that defendant McCullick told Fisher to "remove the back-of-cell delivery box," deleting his original allegation that McCullick told

Fisher to “step aside.” He also has removed certain allegations, including his allegation that McCullick “proceeded to push her entire body weight up against the trap” and that both defendants left the area “laughing and saying provocative racial slurs.” The closest plaintiff comes to changing something important is his change in the description of his injury: originally, he stated that his arm had been bruised and broken; now he says only that his skin became discolored.

Defendants do not oppose plaintiff’s amendments, so long as they will not affect the schedule of this case. They will not. None of these allegations affect the scope of the claim that plaintiff may pursue, nor does plaintiff attempt to add new claims or parties. This means that discovery may proceed undisturbed. Plaintiff thinks otherwise, arguing that there are new factual allegations to deny or admit and a new “theory.” The new theory is nothing more than his view that he still states a claim despite his less severe injury but this does not expand the scope of the case. He is correct that he still states a claim, which is why he may proceed at all in light of his amendments. The minor nature of plaintiff’s injury is one factor among several to be considered in determining whether the amount of force used against him was excessive, Whitley v. Albers, 475 U.S. 312, 320-21 (1986), and the absence of a significant injury does not bar a claim for excessive force so long as the officers used more than a minimal amount of force. Hudson v. McMillan, 503 U.S. 1, 9-10 (1992).

As for the new allegations, substantively they are identical to the old ones, and the need for defendant to file an all but *pro forma* amended answer to respond to those allegations should not upset the schedule in any way.

ORDER

IT IS ORDERED that

1. Plaintiff Hakim Naseer's motion for leave to file an amended complaint, dkt. #66, is GRANTED. The proposed amended complaint docketed at dkt. #67 is now the operative pleading and plaintiff is GRANTED leave to proceed on his Eighth Amendment claim against defendants M. McCullick and J.D. Fisher.

2. The scheduling order dated July 8, 2010 remains in effect.

Entered this 24th day of January, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge