IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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TIMOTHY COLEMAN,

OPINION and ORDER

Plaintiff,

13-cv-566-bbc

v.

MANITOWOC COUNTY SHERIFFS,

Defendants.

- -

In this proposed civil action under 42 U.S.C. § 1983, plaintiff Timothy Coleman, a prisoner at the Dane County jail at the time he filed this complaint (he has since been transferred to the Dodge Correctional Institution), alleges that defendant Manitowoc County deputies used excessive force against him and failed to provide him with medical care. Plaintiff seeks leave to proceed in forma pauperis under 28 U.S.C. § 1915 and has made an initial partial payment as directed by the court under § 1915(b)(1).

Because plaintiff is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny leave to proceed if his complaint is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915(e). However, plaintiff is also a pro se litigant, which means his complaint will be construed liberally as it is reviewed for these potential defects. Haines v. Kerner, 404 U.S. 519, 521 (1972). Having reviewed the

proposed complaint, I conclude that he may proceed on excessive force and medical care claims.

Plaintiff alleges the following facts in his complaint.

ALLEGATIONS OF FACT

The events at issue in this lawsuit took place at some point in 2007, when plaintiff was in the Manitowoc County jail. Plaintiff was being taken to "the hole" and was carrying his possessions in a tote bin. Plaintiff entered an elevator with three deputies. One deputy pulled out mace and another pulled out a stun gun. They told plaintiff to put down the tote bin, but plaintiff refused.

One deputy sprayed plaintiff with mace and plaintiff "was taken to the ground." One deputy held his feet, one deputy handcuffed him and a third deputy used the stun gun on plaintiff "all over [his] body" at least 15 times. Plaintiff had "burn marks all by [his] heart." The deputies put plaintiff in a cell and told him to rinse his eyes but gave him no medical care. They told plaintiff that he would be charged with battery of a law enforcement officer. The criminal case was dismissed at a preliminary hearing.

OPINION

A. Excessive Force

I understand plaintiff to be attempting to bring excessive force claims against the deputies who used force against him in the elevator. As an initial matter, it is not clear

whether plaintiff's claim is properly construed as arising under the Eighth Amendment or the Fourteenth Amendment. Although generally excessive force claims in the prison setting involve the Eighth Amendment, if plaintiff was a pretrial detainee at the time of the incident, his excessive force claim arises under the Fourteenth Amendment's due process guarantee rather than the Eighth Amendment. Graham v. Connor, 490 U.S. 386, 395 n.10 (1989); Dorsey v. St. Joseph County Jail Officials, 98 F.3d 1527, 1528 (7th Cir. 1996). Nevertheless, because the standards governing excessive force claims under the Fourteenth and Eighth Amendments are roughly the same, Wilson v. Williams, 83 F.3d 870, 875 (7th Cir. 1996), the distinction is a fine one.

In determining whether an officer has used excessive force against a prisoner under the Eighth Amendment, the question is "whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm." Whitley v. Albers, 475 U.S. 312, 320 (1986). The factors relevant to making this determination include:

- the need for the application of force
- the relationship between the need and the amount of force that was used
- the extent of injury inflicted
- the extent of the threat to the safety of staff and inmates, as reasonably perceived by the responsible officials on the basis of the facts known to them
- any efforts made to temper the severity of a forceful response

Id. at 321. Under the Fourteenth Amendment, the question is whether defendant's actions

amount to "a deliberate act intended to chastise or deter" or at least "reckless disregard for [plaintiff's] rights." Wilson, 83 F.3d at 875 (citations omitted).

The mere fact that the deputies used force in this instance is not enough to state an excessive force claim. Plaintiff alleges that he refused to comply with the deputies' orders to put down his tote bin, in which case, the deputies were entitled to use force to insure compliance. Soto v. Dickey, 744 F.2d 1260, 1267 (7th Cir. 1984) (when correctional officer gives order to inmate "and the inmate cannot be persuaded to obey the order, some means must be used to compel compliance"). However, plaintiff's allegations that a stun gun was used against him 15 times even though he was already restrained, as well as his allegations that he was given false criminal charges (perhaps in an effort to justify the amount of force used) is enough to state a claim of excessive force under either the Eighth Amendment or Fourteenth Amendment standards.

B. Medical Care

Plaintiff states also that the deputies did not give him medical care following the incident even though he had "burn marks all by [his] heart." Medical care claims are governed by the Eighth Amendment with respect to convicted prisoners and the Fourteenth Amendment with respect to pretrial detainees. Williams v. Rodriguez, 509 F.3d 392, 401 (7th Cir. 2007). Although plaintiff does not say whether he has been convicted or is still awaiting trial, it does not matter because the Court of Appeals for the Seventh Circuit has applied the same standard for medical care claims under both the Eighth Amendment and

the Fourteenth Amendment. Id. In particular, the question is whether the prison official was "deliberately indifferent" to a "serious medical need." Estelle v. Gamble, 429 U.S. 97, 104-05 (1976).

A "serious medical need" may be a condition that a doctor has recognized as needing treatment or one for which the necessity of treatment would be obvious to a lay person. Johnson v. Snyder, 444 F.3d 579, 584-85 (7th Cir.2006). The condition does not have to be life threatening. Id. A medical need may be serious if it "significantly affects an individual's daily activities," Gutierrez v. Peters, 111 F.3d 1364, 1373 (7th Cir. 1997), if it causes significant pain, Cooper v. Casey, 97 F.3d 914, 916-17 (7th Cir. 1996), or if it otherwise subjects the prisoner to a substantial risk of serious harm, Farmer v. Brennan, 511 U.S. 825 (1994). "Deliberate indifference" means that the officials are aware that the prisoner needs medical treatment, but are disregarding the risk by failing to take reasonable measures. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir.1997).

Thus, under this standard, plaintiff's claim has three elements:

(1) Does plaintiff need medical treatment?

(2) Do defendants know that plaintiff needs treatment?

(3) Despite their awareness of the need, are defendants failing to take reasonable measures to provide the necessary treatment?

I conclude that plaintiff states a medical care claim against the deputies, if only barely. Plaintiff provides extremely little detail about this claim, but his statement that the deputies did not get him medical attention after being burned by the stun gun will suffice

at this stage of the proceedings. At summary judgment or trial, plaintiff will need to provide a more detailed account about the type and severity of injuries he sustained, as well as explain how the deputies were aware that plaintiff needed treatment.

C. John Doe Defendants

Finally, I need to address a defect in plaintiff's complaint: he does not actually name as defendants in this case the three deputies discussed in his allegations. Instead, he names "Manitowoc County Sheriffs" as the defendants, by which I can infer that he intends to name the deputies but does not know their identities. I will amend the caption to call these defendants John Doe deputies #1-3. In addition, I will include Manitowoc County Sheriff Robert C. Hermann in the caption solely to provide a person whom the United States Marshals can serve and whom plaintiff may contact regarding ascertaining the identities of the Doe defendants. At the preliminary pretrial conference that will be held later in this case, Magistrate Judge Stephen Crocker will explain the process for plaintiff to identify the names of the John Doe defendants and to ultimately amend the complaint to include their names.

Because Manitowoc County is located in the Eastern District of Wisconsin, it may be that venue in this court is improper. However, venue is a defect that can be waived.

ORDER

IT IS ORDERED that

1. The caption is amended to replace defendant "Manitowoc County Sheriffs" with John Doe Deputies #1-3 and Manitowoc County Sheriff Robert C. Hermann.

2. Plaintiff Timothy Coleman is GRANTED leave to proceed on his claims that

a. defendant John Doe Deputies #1-3 used excessive force against him.

b. defendant John Doe Deputies #1-3 failed to provide plaintiff with appropriate medical care.

3. For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer who will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendants or to defendants' attorney.

4. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of their documents.

5. Copies of plaintiff's complaint and this order will be delivered to the U.S. Marshal for service on defendants.

6. Plaintiff is obligated to pay the unpaid balance of his filing fee in monthly

ayments as described in 28 U.S.C. § 1915(b)(2).

Entered this 8th day of October, 2013.

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