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

DARRIN A. GRUENBERG,

Plaintiff,

v.

SGT. CASPER, DEPUTY M. VOECK, DEPUTY N. JOHNSON, DEPUTY J. RAYMOND, DEPUTY D. SCHUSTER, DEPUTY C. LAFFIN, DEPUTY D. LEATHERBERRY, NURSE JANE DOE, and MULTIPLE JOHN/JANE DOES,

Defendants.

OPINION AND ORDER

13-cv-089-wmc

In this action under 42 U.S.C. § 1983, plaintiff Darrin Gruenberg is suing officers and a nurse at the Dane County Jail in Madison, Wisconsin, for using excessive force against him in violation of the Eighth Amendment, and denying him reading material in violation of the First Amendment. Because he is a prisoner seeking "redress from a governmental entity or officer or employee of a governmental entity," the court must determine initially whether his proposed action (1) is frivolous or malicious; (2) fails to state a claim upon which relief may be granted; or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915A. After examining the complaint, the court concludes that Gruenberg may proceed on both claims.

ALLEGATIONS OF FACT

In addressing any pro se litigant's complaint, the court must read the allegations generously, and hold the complaint "to less stringent standards than formal pleadings

drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 521 (1972). Gruenberg alleges, and the court assumes for purposes of this screening order, the following facts.

A. Parties

Plaintiff Darrin Gruenberg is an inmate at the Wisconsin Secure Program Facility, but at the time of the incidents in question was temporarily housed at the Dane County Jail ("DCJ") in Madison, Wisconsin.

Defendants Sergeant Casper, Deputy Voeck, Deputy Johnson, Deputy Raymond, Deputy Schuster, Deputy Laffin, Deputy Leatherberry, Nurse Jane Doe and other John/Jane Doe defendants were all employees of DCJ.

B. The Incident

On February 21, 2011, Gruenberg was being temporarily housed at DCJ because he was called down to Madison for a state court hearing. At some point, he was transferred to a holding cell and instructed by Deputy Voeck to leave his manilla folder of legal materials outside the cell.

Gruenberg did as requested, but then changed his mind and began to argue with Voeck about whether he had the right to keep the documents in his cell. After further argument, Voeck radioed for assistance. Male DCJ Deputies Johnson, Raymond, Schuster, Laffin, and Leatherberry responded. Although Gruenberg did not physically resist in any way and had no history of assaulting any correctional or jail staff, one of the responding male deputies slammed him into the concrete floor. The deputies on the scene then placed Gruenberg into an uncomfortable restraint chair, and forced a "spit mask" on his head.

Although the deputies soon removed the mask, they left him in the restraint chair for over two hours. A nurse did a perfunctory examination, but did nothing to treat Gruenberg's pain and suffering. Instead, she suggested that Gruenberg was not properly secured to the chair and one of the male deputies then maliciously tightened the arm restraints so excessively that Gruenberg suffered considerable pain. Supervising officer Sergeant Casper witnessed all of these events and had authority to the control the others' conduct, but chose not to intervene.

OPINION

I. Excessive Force Claims

A claim against prison guards for excessive force under the Eighth Amendment has two components: (1) allegations of harm that is more than *de minimis*, and (2) allegations that suggest the force was "unnecessary and wanton" as opposed to "justified and restrained." *Rice ex rel. Rice v. Corr. Med. Serv's*, 675 F.3d 650, 667-68 (7th Cir. 2012).[1] At least as pled, Gruenberg has met both requirements with respect to three separate claims.

First, Gruenberg states a claim against the male deputy who slammed him into the ground. The resulting pain and injury were not insignificant, and the conduct may have been totally unnecessary in the absence of any physical resistance. Second, Gruenberg states a claim against the male deputy who needlessly tightened the restraint strap

[1]Although the incidents occurred in county jail, Gruenberg is protected by the Eighth Amendment's prohibition on cruel and unusual punishment as an incarcerated felon, rather than corresponding protections found in the Fourteenth Amendment for pretrial detainees.

"excessively" around his arm, causing pain. Third, he states a claim against the five guards who strapped him into the restraint chair, allegedly without any need. See *Walker v. Bowersox*, 526 F.3d 1186, 1188 (8th Cir. 2008) ("[O]fficers may reasonably [employ a restraint chair] in a good-faith effort to maintain or restore discipline but may not use it maliciously or sadistically to cause harm.").

Although Gruenberg does not plausibly explain how supervising officer Sergeant Casper had any role in the first two incidents -- on the alleged facts, it seems highly doubtful that Casper could have prevented the first incident, or known about the second one -- Gruenberg may proceed against Sergeant Casper for the alleged, two-hour stint in the chair restraint, since it *may* have been apparent to Casper that use of such restraints was unnecessary for an inmate who was not putting up any sort of physical resistance. As commanding officer on the scene, the decision to put Gruenberg in the chair and leave him there can be attributed to Casper for purposes of § 1983 liability.

The immediate problem with the first and second excessive force claims as pled is that Gruenberg is unable to identify the individuals directly responsible -- he does not know the name of the deputy who tackled him, or the name of the one who over-tightened the wrist restraint. However, all five deputies and Sergeant Casper will remain as defendants in this case for purposes of Gruenberg's third excessive force claim, and Gruenberg should be able to use discovery against these six defendants to determine promptly which of the deputies was responsible for the first and second claims.

Gruenberg will be given an opportunity to promptly amend his complaint once he has this information.[2]

II. First Amendment Claim

Gruenberg also challenges the DCJ policy that Deputy Voecker cited in refusing to allow him to keep his legal materials in his temporary holding cell. For the most part, prison regulations will be upheld if they are "reasonably related to legitimate penological interests," *Turner v. Safley,* 482 U.S. 78, 89 (1987), although restrictions on access to reading materials and particularly legal materials may need to meet a higher standard of justification, *Thornburgh v. Abbott,* 490 U.S. 401, 407-08 (1989). The court suspects that the DCJ will be able to introduce a valid reason for preventing prisoners from keeping personal items in a temporary holding cell generally, and for preventing Gruenberg from doing so in particular. Still, for screening purposes, the court will allow Gruenberg's challenge to this policy to proceed with Deputy Voeck as defendant.

III. Other Claims

Gruenberg asks the court to construe his pleadings liberally, and at points in his rambling complaint references a variety of legal theories and constitutional doctrines. Aside from the two types of claim discussed above, however, the court finds no other viable claims.

At one point, Gruenberg seems to suggest that the nurse who attended him may have been deliberately indifferent to his injuries, but he does not identify any particular

[2]Going forward, Gruenberg has a much larger problem: proving that his own misconduct was not sufficiently outrageous to warrant each of the steps taken by the officers to restore and maintain his compliance.

injury that the nurse could have treated -- his primary complaint is the pain he suffered when he was tackled and continued to suffer when confined in the restraint chair. The nurse could have done nothing about this other than provide pain relief medication, or, if she thought him in real pain direct his release, but the failure to provide assistance without alleging facts demonstrating the nurse's awareness of a real medical need and/or pain cannot constitute deliberate indifference.

Gruenberg also indicates that he was denied his procedural due process rights when placed into restraints without a prior hearing. Even if this deprivation was serious enough to implicate a liberty interest, a two-hour imposition of restraints immediately after an "incident" is precisely the type of liberty deprivation that would be excused the necessity of a prior hearing. Moreover, Gruenberg fails to allege the absence of viable after-the-fact remedies that would create a true due process violation.

ORDER

IT IS ORDERED that:

(1) Plaintiff Darrin Gruenberg's motion for leave to proceed is GRANTED IN PART consistent with the opinion above.

(2) The summons and complaint are being delivered to the U.S. Marshal for service on defendant.

(3) For the time being, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows 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 plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

(5) Plaintiff is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). This court will notify the warden at his institution of that institution's obligation to deduct payments until the filing fee has been paid in full.

Entered this 7th day of April, 2014.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge