

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

MILTON MCDANIEL,

Plaintiff,

v.

JOSEPH BEAHM,

Defendant.

OPINION & ORDER

13-cv-797-wmc

In this proposed civil action, plaintiff Milton McDaniel alleges that defendant Joseph Beahm used excessive force and injured him. McDaniel was granted leave to proceed *in forma pauperis* and paid his initial partial filing fee. Because McDaniel is currently incarcerated, the court must now screen his complaint pursuant to the Prison Litigation Reform Act (“PLRA”) to determine whether it: (1) is frivolous or malicious; (2) fails to state a claim on which relief can be granted; or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915A. After reviewing McDaniel’s pleadings, the court concludes that he may proceed on his suit against Beahm for the use of excessive force in violation of the Eighth Amendment.

ALLEGATIONS OF FACT

In addressing any pro se litigant’s complaint, the court must read the allegations of the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). In his complaint, McDaniel alleges, and the court assumes for purposes of screening, the following facts.

Plaintiff Milton McDaniel is currently (and was for all times relevant to his complaint) incarcerated at Waupun Correctional Institution (“WCI”). Defendant Joseph Beahm is a “CO II” at WCI in Segregation.

On or about August 30, 2013, at 9:00 A.M., McDaniel was in Upper A2 Cell A 224, using the bathroom in his cell. McDaniel had put up a sheet while on the toilet. Beahm came to his door and told McDaniel to put his head out; when McDaniel did so, an unnamed “white shirt” had a Taser pointed at McDaniel’s eye. Beahm said something to the effect of, “Don’t make him tase you in the eyeball.”

When McDaniel went to the door, Beahm allegedly slammed him to the ground, assisted by CO II Gill. At some point, McDaniel was handcuffed to the door, although it is unclear from the pleadings whether this occurred before or after he was slammed to the ground. Beahm then got on top of McDaniel, moving around while still on top of him. Allegedly, Gill then took his hand, touched McDaniel between his buttocks, then went in front of McDaniel, lifted his private parts, and put his hand in McDaniel’s mouth.

As a result of these events, McDaniel allegedly injured his right arm, right leg and “pinky” finger. McDaniel asks for damages of \$4.5 million dollars.

OPINION

McDaniel’s main claim appears to be that Beahm used excessive force against him. In the context of prison, excessive force claims arise under the Eighth Amendment. *Hudson v. McMillian*, 503 U.S. 1 (1992); *Whitley v. Albers*, 475 U.S. 312 (1986). The Eighth Amendment prohibits conditions of confinement that “involve the wanton and unnecessary infliction of pain.” *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981).

Because prison officials must sometimes use force to maintain order, the central inquiry for a court faced with an excessive force claim is whether the force “was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” *Hudson*, 503 U.S. at 6-7. To determine whether force was used appropriately, a court considers factual allegations revealing the safety threat perceived by the officers, the need for the application of force, the relationship between that need and the amount of force used, the extent of the injury inflicted and the efforts made by the officers to mitigate the severity of the force. *Whitley*, 475 U.S. at 321; *Outlaw v. Newkirk*, 259 F.3d 833, 837 (7th Cir. 2001).

Here, McDaniel has alleged that he was in his cell when, without provocation, Beahm demanded that he come to his cell door and then slammed him to the ground for no reason, injuring his arm, leg and finger. Nothing in McDaniel’s allegations suggests that this use of force was necessary for any disciplinary purpose. Indeed, McDaniel has alleged both that he was using the bathroom in his cell at the time these events took place and that he was handcuffed to the door, at least at some point. This is enough to allow the court to infer, for screening purposes only, that Beahm had no legitimate purpose for the force employed. Thus, at this early stage of the proceedings, McDaniel has alleged sufficient facts to state a claim of excessive force under the Eighth Amendment against Beahm.

McDaniel also alleges that Gill placed his hand on McDaniel’s private parts and in McDaniel’s mouth. Certainly, this could state a claim under the Eighth Amendment as well. “An unwanted touching of a person’s private parts, intended to humiliate the victim or gratify the assailant’s sexual desires, can violate a prisoner’s constitutional rights whether or not the force exerted by the assailant is significant.” *Washington v. Hively*, 695 F.3d 641,

643 (7th Cir. 2012). However, McDaniel has not included Gill as a defendant in this suit, and the court cannot simply add Gill as a defendant. *See Myles v. United States*, 416 F.3d 551, 553 (7th Cir. 2005) (“[I]t [is] unacceptable for a court to add litigants on its own motion. Selecting defendants is a task for the plaintiff, not the judge.”). Therefore, McDaniel may not proceed on a claim against Gill at this time.

ORDER

IT IS ORDERED that:

- 1) Plaintiff Milton McDaniel is GRANTED leave to proceed on his excessive force claim against defendant Joseph Beahm.
- 2) Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff’s complaint and this order are being sent today to the Attorney General for service on the defendants. Under the agreement, the Department of Justice will have forty (40) days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff’s complaint if it accepts service for defendants.
- 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.

Entered this 17th day of December, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge