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

QUENTRELL E. WILLIAMS,

Plaintiff,

v.

WARDEN TIM HAINES, *et al.*,

Defendants.

OPINION AND ORDER

14-cv-312-wmc

On October 22, 2015, this court ordered *pro se* plaintiff Quentrell Williams to narrow his complaint in this case because it included numerous, unrelated claims that belonged in at least eight separate lawsuits in violation of Fed. R. Civ. P. 20. (Dkt. #34.) Specifically, before screening his lawsuit, Williams was directed to choose one of these eight lawsuits to proceed under case no. 14-cv-312-wmc. Williams was also advised that if he wished to pursue the remaining lawsuits, he could do so, but would have to pay separate filing fees. Otherwise, he could dismiss the other lawsuits without prejudice to refiling them at a later date.

Williams subsequently responded that he wishes to proceed with what the court has identified as Lawsuit #3 (dkt. #35). Lawsuit #3 consists of the following claims:

- Officer Lentz failed to protect Williams from harming himself on March 3, 2013;
- Lieutenant Esser used a chemical agent against Williams on March 3, 2013 and May 25, 2013;
- Esser's used excessive force on Williams on June 25, 2013;
- Esser used a chemical agent on Williams on June 29, 2013;[1]

[1] The court's October 22, 2015, order also erroneously included Officer Fischer as a defendant in lawsuit #3. Although Fischer was allegedly present during this incident, plaintiff does not allege he sprayed him with the chemical agent or was otherwise involved, nor does plaintiff name him as

- Nurse Jane Doe's failed to protect Williams during the incidents of March 3, May 25, and June 29, 2013.

For the reasons discussed below, Williams may proceed on his Eighth Amendment excessive force claims against Esser, his failure to protect claim against Lentz and his failure to intervene claim against Nurse Jane Joe.

ALLEGATIONS OF FACT[2]

The following are the allegations from plaintiff's complaint related to Lawsuit #3.

I. Parties.

Williams is presently confined at the Waupun Correctional Institution in Waupun, Wisconsin. At all times pertinent to his narrowed complaint, however, he was confined at the Wisconsin Secure Program Facility ("WSPF") in Boscobel. The defendants include the following individuals employed at WSPF: Officer Lentz; Lieutenant D. Esser; and Nurse Jane Doe.

II. March 3 Incident.

On March 3, 2013, Williams was in clinical observation when defendant Lentz gave him a glass nasal spray bottle despite a WSPF and DOC policy that prohibits it for inmates in observation. After receiving the glass bottle, Williams slammed it on the floor

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a defendant. As plaintiff does not seek any form of relief from Fischer, and it does not otherwise appear that plaintiff intended to include Fischer as a defendant, he will be dismissed without prejudice from this lawsuit.

[2] In addressing any pro se litigant's complaint, the court must read the allegations generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of this order, the court assumes the facts above based on the allegations in Williams' complaint.

causing the glass to shatter. He then began to eat the glass. Lieutenant Esser then sprayed Williams with an incapacitating chemical agent. Despite being present and knowing that Williams has asthma, Nurse Jane Doe failed to intervene or prevent Esser from exposing Williams to this incapacitating agent. Williams was treated at a local hospital in Boscobel for ingesting glass.

III. May 25 Incident.

On May 25, 2013, Williams had a psychological breakdown in which he began hearing voices, seeing things and smearing feces around his cell. Williams then went to sleep near the vent at the back of his cell. The next thing Williams knew, his body was burning, his eyes were burning, and he was unable to breathe, all allegedly because Esser had again sprayed him with an incapacitating chemical agent. Williams was given a decontamination shower and apparently again seen by Nurse Jane Doe. Williams alleges that the nurse nevertheless did nothing to prevent Esser from again exposing Williams to the incapacitating chemical agent.

IV. June 25 Incident.

While Williams was in clinical observation on June 25, 2013, he used his meal tray to block the window located at the front of his cell, thinking aliens were looking through the window at him. When Lieutenant Esser arrived, he ordered Williams to come to the door to be handcuffed and removed from the cell. When Williams refused, Esser ordered a cell extraction team to remove him from the cell forcibly, after which Williams was placed in shackles and subjected to a thorough strip search. When

Williams resisted, he was also tasered. Finally, when Williams spit at Esser out of anger and frustration, Esser ordered one of the officers to slam Williams into the wall. Among other things, Williams alleges that he needlessly suffered bruises, swelling and pain from being handcuffed during this incident.

V. June 29 Incident.

On June 29, 2013, Williams attempted to choke himself with the spit mask that he was wearing while in clinical observation. When Officer Fischer saw Williams choking, she summoned Lieutenant Esser, who yet again sprayed Williams with an incapacitating chemical agent despite knowing Williams has asthma. After he lost consciousness from lack of oxygen, Williams claims that Esser further began shooting "pepper balls from some type of gun that sounded like an assault rifle."

Williams was eventually given a decontamination shower and treated for "what looked like puncture wounds almost everywhere the pepper ball[s] hit [him]." Nurse Jane Doe, who was allegedly present during the incident, did not attempt to prevent Esser from exposing Williams to the incapacitating agent.

OPINION

I. Excessive Force Claims Against Defendant Esser

"The 'unnecessary and wanton infliction of pain' on a prisoner violates his rights under the Eighth Amendment." *Lewis v. Downey*, 581 F.3d 467, 475 (7th Cir. 2009) (quoting *Whitley v. Albers*, 475 U.S. 312, 319 (1986)). On the other hand, the use of *de minimis* force, so long as it is not of the sort "repugnant to the conscience of mankind,"

does not implicate the Eighth Amendment. *Id.* (quoting *Hudson v. McMillian*, 503 U.S. 1, 9 (1992)). If force is more than *de minimis*, then the court must consider "whether it 'was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.'" *Id.* (quoting *Hudson*, 503 U.S. at 7). The factors relevant to deciding whether an officer used excessive force include: the need for the application of force; the relationship between the need and the amount of force that was used; the extent of the 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; and any efforts made to temper the severity of a forceful response. *Whitley*, 475 U.S. at 321.

Plaintiff alleges that on June 25, Esser used excessive force against him when he was unnecessarily forcibly removed from his cell, placed in shackles, subjected to a thorough strip search, tasered and slammed against a wall. These allegations -- along with plaintiff's claim that he suffered bruises, swelling and pain -- permit an inference that more than *de minimus* force was used, at least under the generous standard for screening a *pro se* plaintiff's complaint to go forward. *Kerner*, 404 U.S. at 521. Although it appears that plaintiff did not comply with Esser's orders, it is also reasonable to infer at this initial screening that Esser may have used more force than was necessary to remove plaintiff from his cell, and so plaintiff will be permitted to proceed on his excessive force claim against Esser.

Plaintiff further alleges that Esser used excessive force when he used an incapacitating chemical agent against him, having sprayed him on March 3, May 25, and

June 29, 2013. At this stage, the court must also infer that the use of the spray was excessive force. Plaintiff alleges that his body and eyes were burning and he felt that he was being choked when he describes how he felt as a result of the spraying. These descriptions suggest that the use of the sprays was more than *de minimus* force. And although it appears that Esser used the spray in an attempt to stop him from harming himself, plaintiff alleged that he has asthma and consequently the security department would have known that he would suffer contraindication to the types of incapacitating agents Esser used against him, if not the first time than at least the two subsequent times. This suggests that, even if some amount of force was necessary to stop plaintiff from harming himself, the use of the incapacitating agents may have been unreasonable. Accordingly, plaintiff may proceed on his Eighth Amendment claims against Esser related to the June 25, March 3, May 25 and June 29 incidents.

III. Failure to Protect and Intervene Claims Against Defendant Lentz and Defendant Nurse Jane Doe

The Eighth Amendment imposes a duty on prison officials to provide "humane conditions of confinement" and to ensure that "reasonable measures" are taken to guarantee inmate safety and prevent harm. *Farmer v. Brennan*, 511 U.S. 825, 834-35 (1994). To state an Eighth Amendment failure to protect claim, a prisoner must allege that (1) he faced a "substantial risk of serious harm" and (2) the prison officials identified acted with "deliberate indifference" to that risk. *Farmer*, 511 U.S. at 834.

Plaintiff alleges Lieutenant Lentz failed to protect him from harm when he handed him a glass bottle, in violation of a prison policy prohibiting inmates on clinical

observation from having glass bottles. This at least permits an inference that Lentz, who knew that plaintiff was on clinical observation, knew that there was a risk that plaintiff would harm himself with the bottle, but was deliberately indifferent to that risk.

As to plaintiff's allegations related to Nurse Jane Doe, an official may be liable for a constitutional violation if she knew about it, had the ability to intervene, and failed to do so. *Koutnik v.* Brown, 351 F. Supp. 2d 871, 876 (W.D. Wis. 2004) (citing *Fillmore v. Page*, 358 F.3d 496, 505-06 (7th Cir. 2004)). Plaintiff claims that Nurse Jane Doe was present during the March 3, May 25, and June 29 incidents where he was sprayed with the chemical incapacitating agent, but that she did nothing to prevent it. He also alleges that Doe knew each time that plaintiff had asthma and would have a severe adverse reaction to the use of the incapacitating agents. Again, although it may be that the defendants were justified in the use of the spray under the circumstances, it is reasonable at this stage to infer that her failure to act exhibited reckless disregard for plaintiff's rights. Accordingly, plaintiff will be permitted to proceed on his Eighth Amendment failure to intervene claims against Lentz and Nurse Jane Doe.

ORDER

IT IS ORDERED that:

1. Plaintiff Quentrell Williams is GRANTED leave to proceed on his Eighth Amendment claim against Esser for excessive force, as well as his Eighth Amendment claims against Lentz and Nurse Jane Doe for failure to intervene.

2. Plaintiff is DENIED leave to proceed on all remaining claims alleged in the complaint. Defendants Haines, Wiegel, Brown, Belz, Pelky, Jones, Correctional Officer John Does (1-5), Tom, Brown, Mason, Hanfield,

Hoem, Shannon-Sharpe, Edge, Waterman, Nurse Jane Does (1-4), WSPF Psychological Services Unit and WSPF's Security Department are DISMISSED.

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 the 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. Pursuant to an informal 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 defendant. Under the agreement, the Department of Justice will have 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 the defendant. Summons will not issue for Defendant Nurse Jane Doe until plaintiff discovers her identity and amends his complaint accordingly.

6. If plaintiff is transferred or released while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendants or the court are unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 25th day of July, 2016.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge