

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

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MITCHELL LA BREC,

Plaintiff,

v.

ADAM SENSIBAUGH and  
JODI PAULSRUD,

Defendants.

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OPINION and ORDER

Case No. 18-cv-795-wmc

*Pro se* plaintiff Mitchell La Brec brings this action under 42 U.S.C. § 1983 against defendants Adam Sensibaugh and Jodi Paulsrud, who are or were both sheriff deputies at the Chippewa County Jail in Chippewa Falls, Wisconsin. La Brec claims that these defendants violated his constitutional rights in failing to protect him from another jail inmate's assault, and then failing to provide him with any medical care after the assault. La Brec's amended complaint is now before the court for screening pursuant to 28 U.S.C. § 1915(e)(2). After review, the court concludes that plaintiff may proceed on Eighth Amendment claims against both defendants.

ALLEGATIONS OF FACT<sup>1</sup>

In August of 2013, La Brec was housed at the Chippewa County Jail in a dormitory where prisoners participating in the Huber work release program were located. One day, defendants were escorting Nathan Camp, a notoriously aggressive prisoner, to La Brec's dormitory, and during the transport Camp announced that he was going to kick La Brec

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<sup>1</sup> Courts must read allegations in *pro se* complaints generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). The court assumes the facts above based on the allegations made in plaintiff's complaint.

in the face. Apparently both defendants laughed and placed Camp in that dormitory, despite that comment and their knowledge that Camp and La Brec had problems with each other in the past.

Shortly after that interaction, La Brec was brushing his teeth in the dormitory bathroom, when Camp attacked him by kicking him in the face. The blow caused La Brec to fall over, partially lose consciousness, swell up and bleed from his eye. Despite his injuries, defendants did not allow La Brec to see a nurse until the next day. He never visited the hospital, and was actually told that if he went to the hospital he might lose his Huber privileges. La Brec alleges that he suffered severe headaches, memory loss and retention issues since the attack.

## OPINION

The court understands plaintiff to be pursuing claims against defendants for their failure to protect him from assault and refusal to ensure he received prompt medical treatment for his injuries. To determine the applicable constitutional provision, the court looks to whether plaintiff was a pretrial detainee or convicted prisoner during the events outlined in his complaint: the Fourth Amendment applies to the period between a warrantless arrest and the probable-cause determination; the Fourteenth Amendment applies to the period between the probable-cause determination and the conviction; and the Eighth Amendment applies to the period after the conviction. *Collins v. Al-Shami*, 851 F.3d 727, 731 (7th Cir. 2017). Although plaintiff does not explicitly allege his status as the time of the assault, since plaintiff alleges that he was participating in the Huber program, it is reasonable to infer that he was serving a sentence during the relevant time

period. *See* Wis. Stat. § 303.08 (providing that “[a]ny person sentenced to a county jail . . . may be granted the privilege of leaving the jail during necessary and reasonable hours” for various work or education-related purposes). Accordingly, the court infers that the Eighth Amendment standards govern plaintiff’s claims.

Starting with his failure to protect claim, the Eighth Amendment requires prison officials to insure that “reasonable measures” are taken to guarantee inmate safety and prevent harm. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). An inmate may prevail on such a claim by alleging that (1) he faced a “substantial risk of serious harm” and (2) the identified prison officials acted with “deliberate indifference” toward that risk. *Id.* at 834. Plaintiff’s allegations that (1) both defendants heard Camp say that he wanted to kick plaintiff in the face, and were both aware not only that Camp was dangerous in general but also that plaintiff and Camp had a history of disputes, and (2) they failed to take any steps to keep them separate, support an inference of deliberate indifference. Plaintiff thus may proceed against both defendants on an Eighth Amendment claim for their failure to prevent Camp’s assault.

Plaintiff may also proceed against both defendants for their apparent failure to provide plaintiff *any* access to medical care following the assault. A prison official who violates the Eighth Amendment in the context of a prisoner’s medical treatment demonstrates “deliberate indifference” to a “serious medical need.” *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976); *see also Forbes v. Edgar*, 112 F.3d 262, 266 (7th Cir. 1997). Plaintiff’s allegations that he partially lost consciousness and suffered from nausea, swelling, bloody eyes, and symptoms of a concussion permit an inference that he was suffering from a serious medical need after Camp’s assault. Therefore, defendants’

apparent refusal to allow plaintiff to obtain *any* medical attention until the next day supports an inference of deliberate indifference.

## ORDER

IT IS ORDERED that:

1. Plaintiff Mitchell La Brec is GRANTED leave to proceed on Eighth Amendment failure to protect and deliberate indifference claims against defendants Sensibaugh and Paulsrud.
2. The clerk's office will prepare summons and the U.S. Marshal Service shall effect service upon 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 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. 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 27th day of April, 2021.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge