

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

GABRIEL G. RAMIREZ,

Plaintiff,

v.

SHERIFF OF DANE COUNTY, *et al.*,

Defendants.

OPINION AND ORDER

15-cv-365-wmc

Pro se plaintiff Gabriel G. Ramirez has filed a proposed complaint under 42 U.S.C. § 1983 in which he contends that staff at the Dane County Jail used excessive force against him in violation of his constitutional rights. He has also filed a “brief” with his complaint, which the court considers as a supplement to his complaint. (Dkt. #2). Because he is a *pro se* litigant, the court screens his complaint under 28 U.S.C. § 1915A using a “less stringent standard.” *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For reasons explained below, the court concludes that Ramirez may proceed on his claim that defendants Deputy L. Kranski, Deputy Sween, and Jane and John Doe deputies used excessive force claim against him in violation of the Fourteenth Amendment. Ramirez’s claims against the other defendants -- defendants Captain Anhalt, Lieutenant Bahler, Sergeant Connors, Sergeant Olson, T. Diring and Deputy Merrill -- will be dismissed for failure to state a claim upon which relief may be granted.

OPINION

In his complaint, Ramirez alleges that he was incarcerated at the Dane County Jail on November 12, 2014. During the 5 a.m. headcount, a deputy asked Ramirez to put on his jail-issued shirt and when he failed to comply, asked again. Apparently not appreciating the

deputy's tone, Ramirez did not put on his shirt immediately, but eventually complied. He also told the deputy that he was "not an animal" and that there was no need to be rude. In response, Ramirez alleges that Deputies Sween and Kranski then directed several other deputies to assault Ramirez. Among other things, the deputies allegedly grabbed Ramirez's throat, held him against the wall and beat him. To add insult to injury, Ramirez later received a conduct report relating to this incident.

Because Ramirez was in the Dane County Jail at the time of the incident, his claim of excessive force likely arises under the Fourteenth Amendment. *Kingsley v. Hendrickson*, 135 S.Ct. 2466 (2015).¹ To succeed, plaintiff must, therefore, show "that the force purposely or knowingly used against him was objectively unreasonable." *Id.* at 2473. Relevant factors to be considered include: "the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff's injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting." *Id.*

Although obviously incomplete and likely self-serving, Ramirez's allegations are sufficient to state a claim against defendants Sween and Kranski, as well as the Jane and John Doe deputies, all of whom were allegedly involved in his beating for no reason other than he had failed to put on his shirt immediately and told a deputy to stop being rude. Assuming

¹ This assumes that Ramirez was being held as a pretrial detainee. Even if being held pre-arraignment, the standard matters little for screening purposes. *Forrest v. Prine*, 650 F.3d 739, 744 n.4 (7th Cir. 2010). Mr. Forrest was awaiting arraignment at the time Officer Prine employed the taser. Forrest therefore falls within the pretrial detainee category and the Fourteenth Amendment serves as the basis for his excessive force claim.

these allegations are true, it is reasonable to infer that these defendants' alleged use of force was objectively unreasonable under the circumstances.

In contrast, Ramirez has alleged no facts that would support a claim against defendants Sergeant Connors, Sergeant Olson, Lieutenant Bahler, Captain Anhalt or the Dane County Sherriff. Ramirez's only allegations about these supervisory defendants are that they failed to take corrective action *after* the use of force when he complained about it. In a case brought under § 1983, however, "[o]nly persons who cause or participate in the violations are responsible." *George v. Smith*, 507 F.3d 605, 609 (7th Cir. 2007); *see also Minix v. Canarecci*, 597 F.3d 824, 833–34 (7th Cir. 2010) ("[I]ndividual liability under § 1983 requires personal involvement in the alleged constitutional deprivation"). Because Ramirez does not allege that these defendants used excessive force against him, had the opportunity to intervene to prevent the excessive force from occurring, or otherwise violated his constitutional rights, he fails to state a claim against them. *See Miller v. Gonzalez*, 761 F.3d 822, 826 (7th Cir. 2014) ("A police officer can be liable for another officer's excessive force only if that officer had a realistic opportunity to intervene and stop the first officer's actions.").

Finally, Ramirez fails to state a claim against defendants T. Diring or Deputy Merrill. Indeed, his claims against these two defendants are based *solely* on their role as hearing officers reviewing the conduct report he received for this incident. Ramirez alleges these defendants failed to properly investigate his claim of excessive force or properly consider his evidence. However convoluted it may seem, these allegations do not suggest that Diring or Merrill violated Ramirez's constitutional rights, and are almost certainly entitled to qualified immunity, at least absent an allegation that any of his constitutional rights were violated

during the hearing. Accordingly, Ramirez may not proceed against defendants Diring or Merrill either.

ORDER

IT IS ORDERED that:

- (1) Plaintiff Gabriel G. Ramirez is GRANTED leave to proceed on his claims that defendants Deputy Sween, Deputy Kranski and Deputies Jane and John Doe used excessive force against him in violation of the Fourteenth Amendment. The clerk's office will prepare summons and the U.S. Marshal Service shall effect service upon defendants Sween and Kranski. Summons will not issue for the John and Jane Doe defendants until plaintiff discovers the real name of these defendants and amends his complaint accordingly.
- (2) Plaintiff is DENIED leave to proceed on all other claims, and defendants and defendants Sergeant Connors, Sergeant Olson, Lieutenant Bahler, Captain Anhalt, the Dane County Sherriff, T. Diring and Deputy Merrill are DISMISSED from this case.
- (3) For the time being, plaintiff must send the defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing the defendants, he should serve the lawyer directly rather than the 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 the 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) 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 29th day of December, 2016.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge