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

TRAVANTI DOMINIQUE SCHMIDT,

Plaintiff,

v.

ELLEN RAY, WILLIAM BROWN, LIEUTENANT ESSER, and CO OSWALD,

Defendants.

OPINION AND ORDER

15-cv-538-wmc

Pro se plaintiff Travanti Dominique Schmidt brings this action under 42 U.S.C. § 1983, alleging in two unrelated claims that: (1) Wisconsin Department of Corrections ("DOC") inmate complaint examiners Ellen Ray and William Brown violated his rights in completing inmate complaints for him or in denying him adequate time with a law clerk to complete complaints timely; and (2) DOC Lieutenant Esser and Correctional Officer Oswald used excessive force in extracting him from his cell. (Compl. (dkt. #1).) Because Schmidt is incarcerated and is seeking redress from a governmental employee, the Prison Litigation Reform Act ("PLRA") requires the court to screen his complaint and dismiss any portion that is: (1) frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915A. For the reasons that follow, the court will grant Schmidt leave to proceed on an excessive force claim in violation of the Eighth Amendment against Esser and Oswald, but will deny him leave in all other respects.

ALLEGATIONS OF FACT[1]

Schmidt alleges that on May 5, 2013, Lieutenant Esser came to his cell on Range 3 Alpha Unit to remove him for "security and safety purposes"; one there, Esser then opened his cell trap and "excessively sprayed chemical agents all around [his] cell #321 and onto my body causing [him] to pass out and become non-responsive." (*Id.* at p.4.) Schmidt further alleges that Esser did not have a required video camera on him at that time, and to cover up his misconduct, Correctional Officer Oswald falsely accused Schmidt of assaulting him.

Schmidt attaches an adult conduct report to his complaint. (Compl., Ex. 1 (dkt. #1-1).) The report is dated May 5, 2013, and completed by Sargent Hulce. The report states that Schmidt had covered his window and would not respond to attempts to verify his health and safety. After proceeding to Schmidt's cell, Hulce reported noticing that the window was completely covered and that Schmidt refused to uncover the window or even respond to Hulce. Once an emergency cell extraction team was assembled, Lieutenant Esser then reportedly "administered an approximately one second burst of incapacitating agents in the cell." (*Id.* at p.2.) Schmidt then attempted to "hit staff through the door trap with his shoe and pillow." (*Id.*) Thereafter, Schmidt complied by uncovering the window, and he was restrained and removed from the cell. The report further represents that when Correctional Officer Oswald attempted to remove the

[1] In addressing any *pro se* litigant's complaint, the court must read the allegations of the complaint generously, resolving ambiguities and making reasonable inferences in plaintiff's favor. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). In his complaint, Carter alleges, and the court assumes for purposes of this screening order, the following facts.

restraints, Schmidt tried to grab his arm. Another correctional officer noted that Schmidt was ordered to stop before the restraints were removed.

OPINION

I. Excessive Force in Violation of the Eighth Amendment

Schmidt alleges that defendant Esser excessively sprayed chemical agents into his cell, and defendant Oswald lied about Schmidt assaulting him to cover up Esser's excessive use of force. "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)). 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 v. McMillian*, 503 U.S. 1, 7 (1992)). 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.

Here, Schmidt alleges that Esser excessively sprayed chemical agents and that the chemical agents caused him to pass out and burned his skin. Schmidt further alleges that Oswald lied about Schmidt attacking him in an attempt to cover-up (or perhaps justify)

Esser's excessive use of force. Under the lower standard for screening, the court finds these allegations sufficient to pass muster, but Schmidt should understand that to be successful on this claim at summary judgment and trial, he will have to prove that defendants used force maliciously and sadistically to cause him harm.

II. Claim against Ray and Brown

In addition to this central excessive force claim, Schmidt also asserts allegations against Ellen Ray and William Brown, two inmate complaint examiners. As context, Schmidt alleges that he is illiterate and requires assistance in reading and writing. (Presumably, he received assistance in drafting his complaint.) At some point, Schmidt was assigned a jailhouse law clerk to help him with his reading and spelling. "Before that, however, Ellen Ray and William Brown either did my complaints for me but not word for word [quote on quote] or they would not give me enough time with my assigned jailhouse law clerk to prevent late complaint submissions." (Compl. (dkt. #1) pp.3-4.)

This part of Schmidt's complaint fails to meet the requirements of Federal Rule of Civil Procedure 8. Rule 8(a) requires a "'short and plain statement of the claim' sufficient to notify the defendants of the allegations against them and enable them to file an answer." *Marshall v. Knight*, 445 F.3d 965, 968 (7th Cir. 2006). To demonstrate liability under 42 U.S.C. § 1983, a plaintiff must allege sufficient facts showing that an individual personally caused or participated in a constitutional deprivation. *See Zimmerman v. Tribble*, 226 F.3d 568, 574 (7th Cir. 2000); *Walker v. Taylorville Correctional Ctr.*, 129 F.3d 410, 413 (7th Cir. 1997) (noting that "personal involvement" is required to support a claim under § 1983). Dismissal is proper "if the complaint fails to set forth

'enough facts to state a claim to relief that is plausible on its face.'" *St. John's United Church of Christ v. City of Chi.*, 502 F.3d 616, 625 (7th Cir. 2007) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

Here, Schmidt fails to provide sufficient information for the court to evaluate his allegations. Without this information, the court cannot assess whether he states a claim for relief. Similarly, defendants would lack the required notice to defend against his claims. The pleading standard announced in Fed. R. Civ. P. 8(a) does not require "'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 676-78 (2009) (quoting *Twombly*, 550 U.S. at 555). A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." *Id.* (quoting *Twombly*, 550 U.S. at 555).

Even if Schmidt had provided sufficient information to meet the requirements of Rule 8, any claim against Ellen and Brown would appear to be unrelated to the central claim asserted against Esser and Oswald. Federal Rule of Civil Procedure 20 prohibits a plaintiff from asserting unrelated claims against different defendants or sets of defendants in the same lawsuit. More specifically, multiple defendants may not be joined in a single action unless: (1) the plaintiff asserts at least one claim to relief against each defendant that arises out of the same transaction or occurrence, or series of transactions or occurrences; *and* (2) presents questions of law or fact common to all. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

Accordingly, the court will deny Schmidt leave to proceed on a claim against Ray and Brown, without prejudice to him filing a new complaint in a separate action against Ray and Brown. If he opts to file a separate complaint, he should draft it as if he is telling a story to someone who knows nothing about his situation. This means he should explain: (1) what happened to make him believe he has a legal claim; (2) when it happened; (3) who did it; (4) why; and (5) how the court can assist him in relation to those events. He should take care to identify each defendant and the specific actions taken by each defendant that he believes violated his rights. Finally, Schmidt should set forth his allegations in separate, numbered paragraphs using short and plain statements. After he finishes drafting the complaint, Schmidt should review it and consider whether it could be understood by someone who is not familiar with the facts of his case. If not, he should make necessary changes.

ORDER

IT IS ORDERED that:

1) Plaintiff Travanti Dominique Schmidt's request to proceed on an Eighth Amendment claim against defendants Esser and Oswald is GRANTED. In all other respects, Schmidt's request is DENIED, and all other defendants are dismissed from this action.

2) For the time being, plaintiff must send defendant 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.

3) 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.

4) 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 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.

Entered this 13th day of June, 2017.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge