

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

NOAH DABE CLARK,

Plaintiff,

v.

OPINION and ORDER

AUSTIN TUCKER,

22-cv-372-jdp

Defendant.

Pro se plaintiff Noah Clark, an inmate at Jackson Correctional Institution, filed a complaint alleging that Washburn County Sheriff's deputies failed to prevent Clark's former partner from harassing him and that the deputies later shot Clark without provocation during his arrest. Dkt. 1. I screened Clark's complaint and concluded that it had several problems, the two most important being that: (1) the complaint likely violated Federal Rule of Civil Procedure 20 by bringing two distinct sets of claims in one lawsuit; and (2) Clark did not identify any of the individual officers who allegedly violated his rights. Dkt. 9. I offered Clark an opportunity to submit an amended complaint addressing those issues.

Clark has submitted a proposed amended complaint. Dkt. 10. Clark's new complaint focuses solely on the circumstances of his arrest. Clark alleges that Austin Tucker, a Washburn County Sheriff's deputy, shot Clark with a beanbag gun at close range when Clark was lying on the ground. Clark says that Tucker fired at least three bags into Clark's chest, back, and calf, and that Tucker was so close that one of the beanbags ruptured. Clark suffered nerve damage from the incident and he now walks with a cane.

These allegations state a claim under the Fourth Amendment. An officer's use of force violates the Fourth Amendment if, judging from the totality of the circumstances, the officer

uses greater force than was reasonably necessary to effectuate the arrest. *Gonzalez v. City of Elgin*, 578 F.3d 526, 539 (7th Cir. 2009). Here, Clark alleges that Tucker fired the beanbags from a dangerously close range and that Tucker continued firing beanbags at Clark even after Clark was on the ground. Those allegations suggest that Tucker used more force than was necessary to arrest Clark, so I will allow Clark to proceed on a Fourth Amendment excessive force claim against Tucker.

ORDER

IT IS ORDERED that:

1. Plaintiff Noah Clark is GRANTED leave to proceed on a Fourth Amendment excessive force claim against defendant Austin Tucker.
2. The clerk of court is directed to ensure that the United States Marshals Service serves defendant with a copy of plaintiff's complaint and this order. Plaintiff should not attempt to serve defendants on his own at this time.
3. For the time being, plaintiff must send defendant a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer or lawyers who will be representing defendant, he should serve the lawyer directly rather than defendant. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendant or to defendant's attorney.
4. Plaintiff should keep a copy of all documents for his own files. If he is unable to use 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 plaintiff's 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 claims may be dismissed for his failure to prosecute them.

Entered December 2, 2022.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge