

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

FREDRICK MORRIS,

Plaintiff,

v.

ETHAN MARCZEWSKI,
CHRISTOPHER TERSTRIEP, AND
ANGEL GENEMEN,

Defendants.

OPINION AND ORDER

Case No. 22-cv-335-bbc

Plaintiff Fredrick Morris, a prisoner in the custody of the Wisconsin Department of Corrections, has submitted a proposed civil action under 42 U.S.C. § 1983, in which he alleges that correctional officers at Columbia Correctional Institution (“CCI”) subjected him to excessive force on November 10, 2020, while he was housed in restrictive confinement. Plaintiff has made an initial partial payment. His complaint is now before the court for screening under 28 U.S.C. § 1915A, to determine whether it is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant who is immune from such relief. As explained below, plaintiff will be allowed to proceed on excessive force claims against all three defendants.

ALLEGATIONS OF FACT

At the time of the alleged incident, plaintiff was at CCI in restrictive housing in B upper cell 37. Defendants were employed as security staff at the institution: defendant Ethan Marczewski was a lieutenant; Christopher Terstriep was a sergeant; and Angel Geneman was a correctional officer.

On November 10, 2020, plaintiff held the trap on his cell open for approximately seven hours, during which time he was not aggressive, disrespectful or disruptive. At approximately 9:30 p.m., defendants came to his cell. Defendant Marcewski directed plaintiff to “pull [his] arm in,” which I understand to mean to let go of the trap and pull his arm into his cell. Plaintiff refused. Marcewski then turned on his taser and repeated the command; plaintiff refused again. Marcewski then stated “taser, taser,” and began to “drive stun” plaintiff in the arm. Defendant Terstriep then pinned plaintiff’s arm in the trap, preventing plaintiff from pulling it in, as Marcewski continued to stun plaintiff with the taser. Defendant Geneman stood by and watched this happen. Although plaintiff does not say how the incident ended, I infer that at some point Marcewski stopped tasing him and plaintiff pulled his arm into his cell. Plaintiff suffered burns on his right arm and still has pain in his right forearm.

OPINION

Construing the allegations of the complaint generously, as I must, I find plaintiff’s allegations sufficient to state an Eighth Amendment excessive force claim against defendants. To prevail on an Eighth Amendment excessive force claim against a correctional officer, a prisoner must prove that the officer applied force “maliciously and sadistically for the very purpose of causing harm,” rather than “in a good faith effort to maintain or restore discipline.” Hudson v. McMillian, 503 U.S. 1, 6-7 (1992) (quoting Whitley v. Albers, 475 U.S. 312, 320–21 (1986)). Factors relevant to this determination include: (1) why force was needed; (2) how much force was used; (3) the extent of the

injury inflicted; (4) whether the defendant perceived a threat to the safety of staff and prisoners; and (5) whether efforts were made to temper the severity of the force. Whitley, 475 U.S. at 321.

With respect to use of a taser, the Seventh Circuit has long held that “use of a taser gun against a prisoner is more than a de minimis application of force.” Lewis v. Downey, 581 F.3d 467, 475 (7th Cir. 2009); see also Matta-Ballesteros v. Henman, 896 F.2d 255, 256 n.2 (7th Cir. 1990) (noting that a taser “sends an electric pulse through the body of the victim causing immobilization, disorientation, loss of balance, and weakness”). Further, justification to use a taser “does not necessarily exist every time an inmate is slow to comply with an order.” Lewis, 581 F.3d at 477. For example, use of a taser may be unreasonable “in the absence of any agitation or threat” from the inmate; when there is a “short passage of time” between an officer's order and the taser shot; when there is a “single, unrepeated order” before the taser shot is deployed; and when there is a “dearth of warnings” regarding the consequences of an inmate failure to comply with an order. Id. at 478.

Although plaintiff admits that he initially refused to comply with the command to pull his arm inside his cell, his allegations that defendant Terstriep pinned his arm against the trap while defendant Mascewski repeatedly applied the taser permit an inference that defendants used more force than necessary to gain compliance and that they did so maliciously. Plaintiff alleges that he was not agitated or threatening and that he was given only one direct warning before Mascewski tased him. Further, his allegation that defendant Geneman stood by witnessing this but did nothing is sufficient to state a claim

against Geneman for failing to intervene. Id. at 472 (bystander can be liable under § 1983 if bystander had reason to know that fellow officer was using excessive force and had realistic opportunity to intervene to prevent act from occurring).

ORDER

IT IS ORDERED that:

1. Plaintiff Fredrick Morris is GRANTED leave to proceed on claims that defendants Ethan Marczewski and Christopher Terstriep used excessive force against him on November 10, 2020, and Angel Genemen failed to intervene to stop them, in violation of plaintiff's rights under the Eighth Amendment.

2. Plaintiff is DENIED leave to proceed on any other claim.

3. Under 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 60 days from the date of the Notice of Electronic Filing in this order in which to answer or otherwise plead to plaintiff's complaint if it accepts service for the defendants.

4. 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. 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.

5. 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.

6. If plaintiff's address changes while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and he cannot be located by defendants or by the court, his case may be dismissed for failure to prosecute.

Entered this 12th day of July, 2022.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge