

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

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JEFF POFF,

Plaintiff,

v.

LT. FISHER, SGT. OSWALD,  
SGT. SAYLOR, CO WARNER,  
CO HAEKENSACK, NURSE ADAMS,  
CPT. BOISEN, MARK KARTMAN,  
and multiple DOES,

Defendants.  
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OPINION AND ORDER

22-cv-238-bbc

Plaintiff Jeff Poff, appearing pro se, is a prisoner at the Wisconsin Secure Program Facility. Plaintiff has filed a lawsuit under 42 U.S.C. § 1983, in which he contends that defendant Fisher choked him while plaintiff was strapped down in restraints in a controlled observation cell, and multiple other officers on the scene failed to intervene. Dkt. #1.

Plaintiff has made an initial partial payment of the filing fee as previously directed by the court. The next step is for the court to screen plaintiff's complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. §§ 1915 and 1915A. In doing so, the court must accept plaintiff's allegations as true, Bonte v. U.S Bank, N.A., 624 F.3d 461, 463 (7th Cir. 2010), and construe the complaint generously, holding it to a less stringent standard than formal pleadings drafted by lawyers, Arnett v. Webster, 658 F.3d 742, 751 (7th Cir. 2011). As set out below, I find that plaintiff's complaint adequately states an Eighth Amendment claim against defendants Fisher, Oswald, Saylor, Warner, Haekensack, and Adams. With respect

to defendants Kartman and Boisen, plaintiff's claims will be dismissed for failure to state a claim against them.

#### ALLEGATIONS OF FACT

Plaintiff Jeff Poff is an inmate at the Wisconsin Secure Program Facility. Defendants are various correctional staff employed at the institution.

The events described in the complaint relate to an incident that occurred on July 14, 2020. On that date, plaintiff was placed in controlled observation status and “strapped down.” Specifically, he was stripped naked and placed in full restraints on a raised concrete slab with a thin mat under him. At approximately 1:40 a.m., defendants Oswald, Saylor, Warner, Haekensack, Adams and Fisher entered his cell to conduct a “range of motion.” Plaintiff was agitated because he was cold and wet from urinating on himself, and he asked the officers if he could be moved or cleaned for his range of motion. Fisher responded that plaintiff could not be moved until it was approved by Adams, who was the Health Services Unit manager. The defendants then started to remove the bed restraints, at which point plaintiff attempted to sit up, striking his head on a shield that Warner was holding over him.

Fisher then placed a “choke hold” around plaintiff’s neck for approximately 10-15 seconds. Plaintiff said, “I can’t breathe, you’re choking me,” several times. Fisher let go, but then reapplied the choke hold for another 10-20 seconds after they had “another verbal argument,” causing plaintiff to almost pass out. Defendants then reapplied the restraints and left, leaving plaintiff cold and wet until 6 a.m., when he was removed from the restraints.

Later that day, plaintiff met with Captain Boisen and HSU manager Adams. Boisen and Adams said they had reviewed body camera and cell entry video and that it showed that defendant Fisher had violated Department of Corrections' policy. However, when plaintiff wrote the security director, defendant Mark Kartman, and asked him to review Fisher's body camera video for possible excessive force or battery charges, Kartman lied and said there was no body camera footage available and he refused to investigate Fisher.

### OPINION

I understand plaintiff to be asserting the following claims: (1) defendant Fisher's use of a choke hold on plaintiff on July 14, 2020 constituted excessive force under the Eighth Amendment; (2) defendants Oswald, Saylor, Warner, Haekensack and Adams violated plaintiff's Eighth Amendment rights when they failed to intervene in the July 14, 2020 incident; and (3) defendant Kartman and Captain Boisen mishandled plaintiff's complaint about Fisher and refused to investigate it.

The Eighth Amendment protects prisoners from being subjected to cruel and unusual punishment. Brown v. Budz, 398 F.3d 904, 909 (7th Cir. 2005). "Correctional officers violate the Eighth Amendment when they use force not in a good faith effort to maintain or restore discipline, but maliciously and sadistically for the very purpose of causing harm." Wilborn v. Ealey, 881 F.3d 998, 1006 (7th Cir. 2018) (internal citations and quotation marks omitted). Under certain circumstances, "a state actor's failure to intervene renders him or her culpable under § 1983." Yang v. Hardin, 37 F.3d 282, 285 (7th Cir. 1994). A failure to intervene claim may be asserted against officers who were present when the

inmate's constitutional rights were violated by a different officer if the officers had reason to know that excessive force was being used, and the officers had a “realistic opportunity to intervene to prevent the harm from occurring.” Abdullahi v. City of Madison, 423 F.3d 763, 774 (7th Cir. 2005) (quoting Yang, 37 F.3d at 284). Plaintiff's complaint includes sufficient allegations to proceed on an excessive force claim against Fisher and a failure to intervene claim against Oswald, Saylor, Warner, Haekensack, and Adams.

However, plaintiff has failed to state a claim against Kartman, the security director, or Captain Boisen, for their handling of his complaint against Fisher. Although prison officials are required under the Constitution to protect prisoners from assault, Farmer v. Brennan, 511 U.S. 825 (1994), the Constitution does not require officials to investigate or otherwise correct wrongdoing after it has happened. Whitlock v. Brueggemann, 682 F.3d 567, 588-89 (7th Cir. 2012); Strong v. David, 297 F.3d 646, 650 (7th Cir. 2002).

Plaintiff has named “Jane Does/John Does” in the caption of his complaint, but he does not include any allegations against them. Accordingly, he will not be allowed to proceed against any Doe defendants.

Last, plaintiff has filed a separate letter in which he asks for an injunction against “any and all” defendants in this case. Dkt. #6. His letter contains only vague allegations of “ongoing abuse of power and retaliation,” with no explanation of who is engaged in this alleged abuse. The only person that he mentions by name, in a letter to the security director attached to his letter to the court, is an individual who is not a defendant in this case.

Because nothing in plaintiff's letter appears to concern the July 14, 2020 incident, I have not considered it and am taking no action on it. If plaintiff has reason to believe other

individuals are currently violating his constitutional rights, he may bring a separate lawsuit against them.

## ORDER

IT IS ORDERED that

1. Plaintiff Jeff Poff is GRANTED leave to proceed on the following claims:

- an excessive force claim against defendant Fisher for choking him while he was in controlled observation status on July 14, 2020; and
- a failure-to-intervene claim against defendants Oswald, Saylor, Warner, Haekensack, and Adams for failing to intervene to prevent Fisher from choking plaintiff on July 14, 2020.

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

3. 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 defendants. Under the agreement, the Department of Justice will have 60 days from the date of the Notice of Electronic Filing in this order 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 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 8th day of June, 2022.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge