No. 22-2098

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

ADAM R. HAGEMAN,

Plaintiff-Appellant,

v.

MINNESOTA DEPARTMENT OF CORRECTIONS, ET AL.,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Minnesota
19-CV-02581-NEB-DTS
Hon. J. Nancy E. Brasel

APPELLANT ADAM HAGEMAN'S OPENING BRIEF

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SUMMARY OF THE CASE

Adam Hageman is a prisoner in the Minnesota Department of Corrections. He was quietly reading his bible in his cell when five correctional officers forcibly removed him from his bunk and took him to segregation, nominally not because he had done anything wrong but for his own protection. Although he was not resisting, they handcuffed him and pulled on the chain, breaking his wrist and cutting his hands. Prison officials placed him in a segregation cell covered in another prisoner's blood and denied him medical treatment.

Hageman filed a *pro se* complaint alleging claims of excessive force and First Amendment retaliation. The district court dismissed his claims with a conclusory analysis.

Hageman, who has since obtained counsel, requests ten minutes of oral argument.

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JURISDICTIONAL STATEMENT

The district court had subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331. This Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291 because the district court issued a final judgment on March 22, 2022, which disposed of all claims. A12, R. Doc. 72 at 1.[1] Plaintiff-Appellant Adam Hageman filed a timely notice of appeal on April 18, 2022. A26, R. Doc. 72-2 at 1.

STATEMENT OF THE ISSUES

I. Did Hageman state a claim for excessive force when he alleged that prison officials broke his wrist and cut his hands for no penological purpose, solely out of religious animus?

Apposite Constitutional Provisions

- U.S. Const. amend. VIII.

Apposite Cases

- *Edwards v. Byrd,* 750 F.3d 728 (8th Cir. 2014)
- *Hickey v. Reeder,* 12 F.3d 754 (8th Cir. 1993)
- *Thompson v. Zimmerman*, 350 F.3d 734 (8th Cir. 2003)

II. Did Hageman state a claim for First Amendment retaliation when he alleged that prison officials retaliated against him for studying his bible by

[1] All citations referring to "A_" refers to Appellant's Addendum. All citations referring to "App_" refers to Appellant's Appendix.

breaking his wrist, cutting his hands, placing him in a segregation cell soaked in blood, denying him medical treatment, and refusing to provide him his bible?

Apposite Constitutional Provisions

- U.S. Const. amend. I.

Apposite Cases

- *Santiago v. Blair*, 707 F.3d 984 (8th Cir. 2013)
- *Spencer v. Jackson Cnty. Mo.*, 738 F.3d 907 (8th Cir. 2013)

STATEMENT OF THE CASE

I. Factual Background[2]

Adam Hageman is a 42-year-old man incarcerated at Minnesota Correctional Facility – Faribault. In September 2019, he was housed in Minnesota Correctional Facility – St. Cloud. App. 2, R. Doc. 27 at 2. There, he studied the bible several times a day. App. 3, R. Doc. 27 at 3. On September 16, 2019, he was quietly studying the bible in his cell. App. 4, R. Doc. 27 at 4. Several correctional officers entered his cell and forcibly removed him from his bunk as he sat there reading. *Id.* He did not

[2] In reviewing the district court's grant of a motion to dismiss, this Court must accept as true all factual allegations in the complaint and draw all reasonable inferences in favor of Hageman. *Topchian v. JPMorgan Chase Bank, N.A.*, 760 F.3d 843, 848 (8th Cir. 2014). This is particularly true here as Hageman's *pro se* complaint, '"however inartfully pleaded,' must be held to 'less stringent standards than formal pleadings drafted by lawyers.'" *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (quoting *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972)).

resist in any way. App. 87–88; R. Doc. 66 at 17–18. The force was completely unnecessary. App. 89–90, R. Doc. 66 at 19–20. As they escorted him down the hall to segregation, out of retaliation and religious animus, the officers lifted him by his handcuff chain, breaking his wrist and cutting his fingers. App. 5–7, R. Doc. 27 at 5–7.[3]

As he was taken to segregation, Hageman made several requests that he be allowed to bring his bible, which were ignored. App. 4, R. Doc. 27 at 4. He was placed in a segregation cell and strip searched in front of five male guards and one female guard. App. 5, R. Doc. 27 at 5. The cell was soaked in another prisoner's blood on the wall, floor, and sink. App. 7, R. Doc. 27 at 7. A nurse arrived in his segregation cell and advised him that the officers appeared to have fractured his right wrist in their use of force as well as cut him on his right thumb and index finger. App. 6, R. Doc. 27 at 6. The nurse left and returned with a splint for his wrist and Tylenol. App. 7, R. Doc. 27 at 7.

The following morning, the facility's doctor arrived at his segregation cell and Hageman informed her that his wrist was broken, his fingers had been bleeding, and the segregation cell was covered in another prisoner's blood. *Id.* The doctor informed

[3] Hageman's complaint alternately refers to his wrist being fractured and it being broken. These terms are synonymous. *See* Mayo Clinic, *Broken Wrist*, (June 29, 2022) https://www.mayoclinic.org/diseases-conditions/broken-wrist/symptoms-causes/syc-20353169.

him that she would tell the Sergeant to move him to a safe cell. *Id.* Staff brought Hageman to meet with the Lieutenant on duty, who informed Hageman that there would be no rule violation report and that he would be sent back to general population. App. 8, R. Doc. 27 at 8.

After being sent to the doctor where x-rays were ordered on his wrist—though medical staff never actually followed the order and took x-rays—Hageman was surprised to find himself returned to segregation against the Lieutenant's orders. App. 9, R. Doc. 27 at 9. He was in extreme pain. App. 11, R. Doc. 27 at 11. While in segregation, he filled out several request forms for a bible, which he never received. App. 10, R. Doc. 27 at 10; App. 11, R. Doc. 27 at 11. The Lieutenant visited the following day, apologized, and sent him back to general population. App. 10, R. Doc. 27 at 10.

In the following weeks, Hageman suffered terrible pain from his broken wrist and made numerous requests for medical attention, which he never received. App. 15, R. Doc. 27 at 15. The prison's paperwork indicated that he was moved to administrative segregation for his own protection, App. 42, although Hageman alleged the segregation was punitive. App. 17, R. Doc. 27 at 17.

II. Procedural History

Hageman filed the operative complaint *pro se* on June 19, 2020, alleging claims of, *inter alia*, Eighth Amendment excessive force and First Amendment

retaliation. App. 124, R. Doc. 1. Defendants moved to dismiss on May 4, 2021. App. 129, R. Doc. 52. The district court's magistrate judge issued a report and recommendation, recommending the motion be granted. App. 130, R. Doc. 65. Hageman objected. App. 130, R. Doc. 66. The district court adopted the magistrate's report and recommendation, overruling Hageman's objections. App. 130, R. Doc. 71. The district court held that no defendant committed excessive force because "Hageman does not dispute that he was initially segregated for his safety, which is an authorized method of safeguarding Hageman and maintaining institutional security." A7, R. Doc. 71 at 7. It held that no defendant committed First Amendment retaliation because Hageman has not pled facts sufficient to show that Defendants took an adverse action against him motivated by his exercise of the protected activity." A6, R. Doc. 71 at 6. This constituted the district court's entire analysis of these two claims. Hageman timely appealed. A26, R. Doc. 72-2.

SUMMARY OF THE ARGUMENT

The district court erred in dismissing Hageman's Eighth Amendment claim for excessive force. He alleged that he was quietly reading when prison officials forcibly removed him from his bunk, placing him in handcuffs and yanking him by them, breaking his wrist and cutting his hand. No allegation supports any basis for this use of force other than religious animus. A long line of this Court's case law has

established that the significant use of force for reasons unrelated to security state a claim for excessive force.

The district court also erred in dismissing Hageman's First Amendment retaliation claim. Silently studying the bible is protected First Amendment activity. The abuse he experienced—including the violence described above, placement in a segregation cell soaked in another prisoner's blood, and the denial of medical care for his broken wrist—would chill a person of ordinary firmness from engaging in religious activity. And Hageman has sufficiently alleged a causal link between the protected activity and the adverse actions, particularly as this question is virtually always inappropriate to resolve before trial even on summary judgment. This Court should reverse these two claims and remand for discovery.

ARGUMENT

This Court reviews review *de novo* the district court's grant of a motion to dismiss, accepting as true all factual allegations in the complaint and drawing all reasonable inferences in favor of the nonmoving party. *Topchian v. JPMorgan Chase Bank, N.A.*, 760 F.3d 843, 848 (8th Cir. 2014).

I. Hageman Plainly Stated a Claim for Excessive Force.

"When confronted with a claim of excessive force alleging a violation of the Eighth Amendment, the core judicial inquiry is 'whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to

cause harm."' *Santiago v. Blair*, 707 F.3d 984, 990 (8th Cir. 2013) (quoting *Hudson v. McMillian*, 503 U.S. 1, 6–7 (1992). In analyzing this question, this Court often looks to three factors: 1) the need for the application of force; 2) the relationship between the need and the amount of force that was used; and 3) the extent of injury inflicted. *Munz v. Michael*, 28 F.3d 795, 798 (8th Cir. 1994).

Even approaching the question at its highest level of generality, Hageman plainly stated a claim. He alleged that correctional officers forcibly removed him from his bunk as he quietly read his bible, handcuffing him and lifting him by his handcuffs until they broke his wrist and cut his hands. App. 4–7, R. Doc. 27 at 4–7. No allegation even implies that the officers were acting in good faith to maintain or restore discipline or, indeed, were furthering any penological purpose. App. 87–88; R. Doc. 66 at 17–18. Even according to Defendants' paperwork, Hageman was moved to segregation for his protection, not out of a rules violation or because he posed a threat to the safety of others. App. 42. This is further reinforced by the fact that after the incident the prison never disciplined or reprimanded Hageman for having done anything wrong. App. 8, R. Doc. 27 at 8.

The allegations of the complaint suggest that the officers' motives were religious discrimination, not to restore order and discipline. The only indication of the officers' motivation is that Hageman was reading his bible when they entered his cell, that they had a history of denying him access to his bibles before and after the

incident, and Hageman's straightforward allegation in his complaint that the officers acted out of religious discrimination. App. 10–11, R. Doc. 27 at 10–11. Even if this Court concludes that his allegation of discriminatory motive is insufficiently supported by factual allegations, there is no contrary clue whatsoever to a good-faith basis for the officers' action. Speculating about potential good-faith reasons for the assault to Hageman is contrary to the Rule 12 standard which requires all inferences to be made in favor of Hageman. *Topchian,* 760 F.3d at 848.

Analyzing the three specific factors to help evaluate excessive force claims leads to the same result. The "need for the application of force" was none. Hageman was quietly reading when Defendants entered his cell, and he did not resist them. Again, no allegations even imply that the prison officials needed to use any force: Hageman was never written up for a rule violation report after the incident, and Hageman was nominally being moved to segregation for his own protection.

Because there was no need for the use of force, the "relationship between the need and the amount of force" was not only disproportionate but nonexistent—the use of force bore no relationship to any legitimate penological goal. And the "extent of injury inflicted" was serious. The Defendants broke Hageman's wrist, cut his hands, and caused him "extreme pain." App. 11, R. Doc. 27 at 11.

This Court has a significant history of cases that clearly establish the principle that prison officials may not use significant force on a prisoner out of animus or for

no reason at all. In *Edwards v. Byrd*, this Court held that plaintiffs survived summary judgment when, in the context of a prison riot, prison guards entered their cells and deployed force—including kicking and using a flash-bang—although they were not resisting. 750 F.3d 728, 730–32 (8th Cir. 2014).

In *Hickey v. Reeder*, this Court reversed the outcome of a bench trial in which a district court had held that using a stun gun against a prisoner was not constitutionally excessive force. 12 F.3d 754, 757–59 (8th Cir. 1993). Although the prisoner was "agitated," "belligerent," and refusing an officer's order, this Court held that the record clearly showed that prison officials used a stun gun on him to punish him for not following orders and to make an example of him, not because they feared for their safety. *Id.* at 757–58. The Court had "not found, and hope[d] never to find, a case upholding the use of this type of force on a nonviolent inmate to enforce a housekeeping order." *Id.* at 759.

In *Thompson v. Zimmerman*, a prisoner "was sitting on a bench, with his hands on his legs, looking down" when correctional officers "entered his cell and beat him." 350 F.3d 734, 735 (8th Cir. 2003). Although he had earlier been yelling and kicking the walls and doors, he had ceased doing so when the officers beat him. *Id.* As a result, this Court held that there was "no basis for a reasonable officer to believe force was needed at that time to prevent" the prisoner "from endangering himself or others." *Id.*

The United States prosecuted a prison guard for committing Eighth Amendment violations in *United States v. Miller*, in which a prison guard took a prisoner who had earlier caused a disturbance and struck him with a closed fist and then kicked and stomped on his body when he fell. 477 F.3d 644, 646 (8th Cir. 2007). This Court affirmed the sufficiency of the evidence underlying the jury's verdict, holding a reasonably jury could have concluded that punching and kicking a prisoner with "no legitimate reason to do so" was malicious. *Id.* at 647.

Smith v. Conway County involved another prisoner who refused an officer's orders, this time to get off of his bunk, although this prisoner was physically unable to do so because of his physical disabilities. 759 F.3d 853, 856 (8th Cir. 2014). Two guards tased him twice for refusing orders. *Id.* This Court affirmed the denial of summary judgment on the grounds of qualified immunity, holding that the use of force for reasons unrelated to safety was clearly established as unconstitutional. *Id.*at 859.

In *Munz v. Michael*, a prisoner in the process of being transferred became disruptive in the back of a squad car, destroying the inside of the car and eventually being convicted by a jury of destruction of government property. 28 F.3d 795, 797 (8th Cir. 1994). Prison officials housed him overnight at a local jail, where they beat him in a padded cell, although not so badly so as to incur serious injuries. *Id.* This Court affirmed the denial of qualified immunity to the guards on summary judgment,

holding that although the prisoner had been violently disruptive and did not suffer serious injury, beating the prisoner in a padded cell after he had calmed down was devoid of any "good-faith effort to maintain or restore discipline" but was "applied maliciously and sadistically for the very purpose of causing harm." *Id.* at 799–800.

Even by the standards of this Court's broad case law prohibiting significant force for non-penological reasons, Hageman's allegations here are unusually straightforward. First, the above cases contain at least *some* indication of the need for force. Here, there was no disorder or threats of violence as in *Munz*; no refusal to obey orders as in *Smith* and *Hickey*; no previous disturbances as in *Miller* or *Thompson*; and no prison riot, as in *Edwards*. Second, every decision above was made at summary judgment or post-trial, while, here, the district court dismissed Hageman's claim under Rule 12, meaning that he was not even entitled to discovery.

The district court erred. Its only justification for its holding was that Hageman "was initially segregated for his safety, which is an authorized method of safeguarding Hageman and maintaining institutional security." A7, R. Doc. 71 at 7. The legitimacy of Defendants' transfer of Hageman to administrative segregation does not bear on whether they had the authority to break his wrist and cut his hands in doing so. The district court failed to consider the allegations at the heart of his excessive force claim, and this Court should reverse for discovery.

II. Hageman Stated a Claim for First Amendment Retaliation.

To state a claim of First Amendment retaliation, a plaintiff must demonstrate "(1) that he engaged in a protected activity; (2) that the government official took adverse action against him that would chill a person of ordinary firmness from continuing in the activity; and (3) that the adverse action was motivated at least in part by the exercise of the protected activity." *Santiago,* 707 F.3d at 991. Hageman has done so.

First, studying one's bible is plainly protected activity under the First Amendment. *Hudson v. Palmer*, 468 U.S. 517, 523 (1984) ("Prisoners must be provided reasonable opportunities to exercise their religious freedom guaranteed under the First Amendment") (citations omitted); *Altman v. Minnesota Dep't of Corr.*, 251 F.3d 1199, 1202–03 (8th Cir. 2001) (holding that plaintiff's act of silently reading the Bible was protected speech). Neither Defendants nor the district court disputed as much below. App. 60–61, R. Doc. 53 at 10–11; A40–41 R. Doc. 65 at 11–12; A6, R. Doc. 71 at 6.

Second, Hageman experienced a series of retaliatory actions that would chill a person of ordinary firmness from continuing in the activity. First and most notably, as described above, correctional officials yanked him off his bunk and then broke his wrist while he was quietly reading his bible. This alone would be sufficient to state a First Amendment retaliation claim, as this Court has held that even the *threat* of violence would chill a person of ordinary firmness from engaging in protected

activity. *See Cooper v. Schriro*, 189 F.3d 781, 784 (8th Cir. 1999); *see also Santiago*, 707 F.3d at 988; *Burgess v. Moore*, 39 F.3d 216, 218 (8th Cir. 1994); *Burton v. Livingston*, 791 F.2d 97, 101 (8th Cir. 1986).

Hageman documented additional ways that he was retaliated against. Defendants moved Mr. Hageman to a cell in administrative segregation that was soaked in another prisoner's blood on the wall, floor, and sink after receiving open wounds from the assault, making it hazardous for his health. App. 7, R. Doc. 27 at 7; *see Taylor v. Bailey*, 494 F. App'x 674, 675 (8th Cir. 2012) (holding that placing plaintiff in "administrative segregation" despite never charging or formally disciplining him was, on its own, sufficient to state a claim for retaliation). Both a physician and a lieutenant told Hageman he would be transferred promptly out of his blood-soaked cell, only for line-level staff to return him to the dangerous segregation cell. App. 7, R. Doc. 27 at 7; App. 8, R. Doc. 27 at 8; App. 9, R. Doc. 27 at 9. The near complete failure to treat his injuries also indicate retaliation: he was never taken for a follow-up with a doctor despite pain medication issues and his injuries were never photographed despite dozens of requests. App. 12, R. Doc. 27 at 12. And while Defendants' paperwork suggests Hageman was placed in administrative segregation for his own protection, Hageman alleges he was placed in *punitive* solitary confinement for three days. App. 42, R. Doc. 27 at 17. He was

also not allowed to take his bible to segregation nor provided with a replacement. App. 11, R. Doc. 27 at 11.

These allegations were also sufficient to establish the third prong of a First Amendment retaliation claim at this stage of litigation by alleging a link between his protected activity and the adverse actions. First, the temporal nexus could not have been stronger—Defendants assaulted Hageman at the moment he was reading his bible. *See Santiago*, 707 F.3d at 993 (holding that the plaintiff's evidence that a prison guard threatened him three days after filing an excessive force claim through the grievance process was sufficient for a reasonable jury to conclude that the threat was motivated by the plaintiff's protected activity of filing a grievance); *Spencer v. Jackson Cnty. Mo.*, 738 F.3d 907, 911–13 (8th Cir. 2013) (holding a First Amendment retaliation claim was viable when a detainee was transferred almost immediately after he reminded a detention center officer that he filed a lawsuit against her because "this timing is strong evidence that he was transferred in retaliation.").

Second, there are no explanations consistent with any penological goal that justify Defendants' actions, either in Hageman's complaint, the attached exhibits, or Defendants' motion to dismiss. This Court has held that a defendant's failure to offer a nonretaliatory motive for adverse actions can support the conclusion that genuine issues of material fact remain on a retaliation claim. *Spencer*, 738 F.3d at 912. Of

course, Defendants have not had the opportunity to introduce evidence of nonretaliatory motives for their adverse actions given the early stage of litigation, though this simply demonstrates the district court's error in dismissing Hageman's complaint before discovery.

Third, Hageman alleged a broader pattern of behavior by Defendants that demonstrate animus to his religious practices. He alleged that he was assaulted while reading his bible; that he was then needlessly deprived of his bible despite numerous requests, App. 11, R. Doc. 27 at 11; and that his partner in bible study was similarly needlessly deprived of his bible in segregation, *id.*

Finally, insomuch as Hageman's *pro se* complaint lacked detail regarding Defendants' intent, this will almost always be the case in demonstrating the intent of retaliatory actions before discovery, making resolution of this question at the motion to dismiss stage on this basis almost always inappropriate. Indeed, "causal connection is generally a jury question." *Revels v. Vincenz*, 382 F.3d 870, 876 (8th Cir. 2004). In rare cases, "it can provide a basis for summary judgment when the question is so free from doubt as to justify taking it from the jury." *Id.* (citations omitted). This Court has typically found the question "so free from doubt" when a plaintiff has demonstrated no evidence of retaliation and defendants have had a good-faith explanation for their actions. *See Graham v. Barnette*, 5 F.4th 872, 889 (8th Cir. 2021); *Baribeau v. City of Minneapolis*, 596 F.3d 465, 481 (8th Cir. 2010);

Revels, 382 F.3d at 876. Here, neither is the case. And even were it otherwise, Hageman has not even had the opportunity to obtain discovery and reach summary judgment.

Like with Hageman's excessive force claim, the district court's analysis of his retaliation claim was perfunctory. The district court addressed the claim in two sentences, simply making the conclusory holding that Hageman had not pled sufficient facts to allege that Defendants took an adverse action or that the action was motivated at least in part by the exercise of protected activity. A6, R. Doc. 71 at 6. For the reasons described above, this conclusion is mistaken. This Court should reverse.

CONCLUSION

This Court should reverse the district court's grant of dismissal to Defendants and remand for further proceedings on Hageman's Eighth Amendment excessive force and First Amendment retaliation claim.

August 19, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the date of filing a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the Court's electronic filing system.

August 19, 2022

/s/ Samuel Weiss
Samuel Weiss

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify that:

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 3,789 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word with a Times New Roman 14-point font. This brief has been scanned for viruses.

Date: August 19, 2022

/s/ Samuel Weiss
Samuel Weiss