

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 REPLY BRIEF

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ARGUMENT

Adam Hageman's *pro se* complaint alleged that prison officials attacked him for no reason other than religious animus, breaking his wrist, leaving him in a cell covered in blood, and refusing to provide him medical care or his bible. These allegations sufficed to state a claim for excessive force and First Amendment retaliation. Defendants argue to the contrary only by repeatedly discounting the procedural posture and its relevance to this Court's review. They argue that Hageman insufficiently attributed conduct to each individual officer but rely exclusively on cases decided after discovery, when plaintiffs have had the opportunity to use factfinding to distinguish between acts of particular defendants. They argue that Hageman has not demonstrated enough of a causal link between his religious practice and Defendants' abuse of him, ignoring that this Court has held the causation element of such claims to typically be a jury question and certainly not a Rule 12 one. And a number of Hageman's allegations, which must be interpreted liberally at this stage of the proceedings, Defendants encourage this Court to simply ignore. The district court erred in dismissing Hageman's case before discovery, and this Court should reverse and remand for further proceedings.

I. Hageman Stated a Claim for Excessive Force.

Hageman alleged that he was calmly reading the bible on his bed when Defendants entered his cell, forcibly removed him from his bunk, placed him in

handcuffs, and yanked him by them until they cut his hand and broke his wrist. Op. Br. 7. These allegations of senseless violence plainly state a claim for excessive force. The district court dismissed his claim by holding that the prison was justified in segregating him for his safety, the nominal basis for Defendants' entry into Hageman's cell. A7. This conclusion, whether correct or not, bears no relationship to Hageman's excessive force claim, which concerned Defendants' unprovoked violence in the process of performing this task.

Defendants do not defend the district court's conclusion but instead put forward a single argument in support of it—that Hageman's complaint was too vague about which defendant did what. Ans. Br. 7–10. This Court's precedent is clear that after discovery, a plaintiff is indeed obligated to articulate the actions of each defendant with some specificity. But before discovery, as here, a plaintiff often cannot know which defendant did what, and this Court does not require them to do so. This case is a perfect example why; in a fast-moving situation of unprovoked violence, Hageman likely does not know which of the coterie of prison guards that stormed into his cell yanked him off his bed or tugged his handcuffs behind his back sufficiently to break his wrist.

This Court's case law makes this distinction clear, and it fatally undercuts Defendants' lone argument. Most squarely relevant is this Court's opinion in *Bonner v. Outlaw*, 552 F.3d 673 (8th Cir. 2009). In *Bonner*, the warden of a prison appealed

the district court's denial of qualified immunity and argued, in part, that the plaintiff had failed to allege his personal involvement in the constitutional violation. *Id.* at 676, 678. This Court recognized the warden's "exact role is unclear at this stage of litigation" because the Court was "reviewing a limited record in which discovery has yet to take place." *Id.* at 679. However, this Court affirmed the district court's decision despite the uncertainty of the defendant's role, holding that the complaint sufficiently alleged personal involvement because the plaintiff could potentially prove later in the proceedings that the defendant was "personally involved in creating, applying, or interpreting a policy" that supported a constitutional violation. *Id.* at 679–80. Like *Bonner*, though Hageman was not able to specify at this early stage in the litigation what particular officer did what during the assault, Hageman's claim should not be dismissed before discovery where he will have the opportunity to do so.

Instead of meaningfully grappling with this Court's case law that establishes that Defendants' force was excessive, Defendants instead argue that all the cases in the opening brief "are distinguishable, because unlike Hageman's case, those cases involved allegations of unconstitutional conduct ascribed to specific defendants." Ans. Br. 7. Defendants mischaracterize the cases, however, in their use of the word "allegations"—each and every case Defendants cite was appealed from the summary judgment or post-trial stage, not a motion to dismiss. Op. Br. 9–11. This court relied

on *evidence* of conduct by each defendant, not merely allegations. Unlike the plaintiffs in those cases, Hageman has not had the benefit of discovery or directions by the court to help him pinpoint which Defendant committed what act.

For example, Defendants argue that Hageman’s reliance on *Edwards v. Byrd*, 759 F.3d 728 (8th Cir. 2014), is misplaced, because “unlike Hageman’s complaint, the *Edwards* case is replete with details.” Ans. Br. 8. But the “case is replete with details,” *id.*, precisely because the case arose from the defendant’s appeal at the summary judgment stage, after discovery had already begun. *Edwards*, 750 F.3d at 731. Defendants claim that that this Court relied on the “allegations” of the complaint that “if proved, could show the defendants” violated the Eighth Amendment, Ans. Br. 8, when, actually, this Court never mentioned relying on any allegations or the complaint. *Edwards*, 750 F.3d at 732–33. Instead, this Court in *Edwards* relied on evidence obtained through discovery such as video footage from the detention center’s security camera system. *Id.* at 733. Unlike *Edwards*, Hageman does not have the benefit of video or internal records from the prison to know who exactly assaulted him, demonstrating why dismissing the case at this stage is improper.

Defendants analogously argue that “the other cases Hageman relies on are cases where there were identifiable defendants engaging in unconstitutional conduct” and include a string of citations from the opening brief. Ans. Br. 8. But

again, all of these cases were decided on either a summary judgment or trial record, where the plaintiffs had the advantage of discovery to help identify the defendants' particular actions in their use of excessive force. *See Jackson v. Gutzmer*, 866 F.3d 969, 971–73 (8th Cir. 2017) (appeal from the denial of summary judgment based on qualified immunity where the court used evidence, including declarations from the parties, medical evidence, and video footage, to analyze defendants' actions in the plaintiff's excessive force claim); *Smith v. Conway Cnty.*, 759 F.3d 853, 856, 860–61, 862 n.4 (8th Cir. 2014) (appeal from denial of summary judgment and qualified immunity where the district court relied on incident reports and depositions); *United States v. Miller*, 477 F.3d 644, 647–48 (8th Cir. 2007) (a post-trial appeal where there was the benefit of a full trial record, including medical records and testimony of officers); *Thompson v. Zimmerman*, 350 F.3d 734, 735 (8th Cir. 2003) (appeal from summary judgment where the court relied on evidence, including defendants' testimony).

Munz v. Michael, 28 F.3d 795 (8th Cir. 1994), in particular demonstrates why this Court would err in affirming the district court on the alternative ground that Hageman failed to differentiate between particular Defendants. In *Munz*, the plaintiff alleged he was bound, slammed against the floor, and stomped on by a group of defendants. *Id.* at 797. This Court cited the plaintiff's verified complaint that made general allegations against the "jailers and marshals" as a collective group without

differentiating between any Defendant in particular. *Id.* For example, the complaint states, “[S]uddenly [Munz] was grabbed with many pairs of hands, slammed with great force and violence against a brick wall, knocking his glasses off, and then lifted up and carried by jailers and marshals.” *Id.* Even without the plaintiff identifying particular actions made by particular jailers or marshals, this Court determined that the plaintiff’s verified complaint alone was sufficient to create genuine issues of material fact and preclude summary judgment. *Id.* at 798–99. This Court held that it “must believe the allegations in Munz’s verified complaint as they are evidence to the same extent as statements in a sworn affidavit.” *Id.* at 799. Hageman, like *Munz*, has included sufficient facts in his complaint to plausibly allege that a group of officers assaulted him. Unlike *Munz*, who had the benefit of some discovery records at the summary judgment stage including medical records, *id.* at 797, Hageman has had no similar avenues to identify particular Defendants. The district court erred in dismissing Hageman’s excessive force claim, and this Court’s precedent does not support affirmance on the alternative ground that Hageman insufficiently distinguished between the Defendants who assaulted him.

II. Hageman Stated a Claim for First Amendment Retaliation.

Hageman alleged that he was retaliated against for his religious practice by Defendants who assaulted him without provocation while he read his bible, deposited him in a cell covered in blood, and denied him medical treatment.

Defendants defend the dismissal of his claim on a single ground—that Hageman failed to provide a sufficient nexus between the protected activity and the adverse actions by Defendants. Ans. Br. 11.

Defendants err in two respects. First, they misconstrue Hageman’s allegations. They write three times that the mere fact that Defendants affected Hageman’s transfer while he was reading a bible does not demonstrate First Amendment retaliation. Ans. Br. 11–12 (“Just because Hageman happened to be reading his Bible when the transfer occurred does not create an inference it [sic] that it was the Bible-reading that caused the transfer”); Ans. Br. 12 (characterizing Hageman’s allegations of “Defendants’ actions” as “the transfer”); *id.* (“Nothing in Hageman’s complaint and supplement should invite this Court to infer the DOC employees transferred Hageman to segregation because he was reading his Bible.”). Hageman’s allegations, however, do not focus on the fact of his initial transfer at all—they encompass his unprovoked assault during the transfer, his placement in a cell covered in blood while he had open wounds, his continued stay in this blood-covered cell despite supervising staff promising to move him, and the denial of his medical treatment following the assault. Op. Br. 12–13. Hageman also clearly alleged that staff withheld his bible from him and his co-worshiper on multiple occasions despite his requests, further indicating religious animus. Op. Br. 14–16. Defendants do not contest that these allegations demonstrate a plausible causal link

between Hageman's protected activity and Defendants' adverse actions, but instead simply ignore them.

Second, Defendants again disregard the case's procedural posture. Hageman explained in his opening brief that causation is generally a jury question and virtually never appropriate on Rule 12, before a plaintiff has the ability to investigate the motives driving defendants' actions through discovery. Op. Br. 15–16. Defendants do not contest but simply evade the application of this principle here, one that is fatal to their argument for affirmance.

III. Defendants are Not Entitled to Qualified Immunity.

Defendants argue that this Court should grant qualified immunity for both the First and Eighth Amendment claims. Ans. Br. 13–14. In determining whether an official is entitled to qualified immunity, courts engage in a two-pronged inquiry. *See Saucier v. Katz*, 533 U.S. 194, 201 (2001) The first prong asks whether the facts, taken in the light most favorable to the party asserting the injury, show the defendant's conduct violated a constitutional right. *Id.* The second prong asks whether the right was “clearly established” at the time of the defendant's conduct. *Id.* The rights must be described with adequate specificity, but there need not be a case directly on point so long as existing precedent is sufficiently analogous as to place the officers on notice that their conduct was unlawful. *Taylor v. Riojas*, 141 S. Ct. 52, 53 (2020). Defendants typically are not entitled to qualified immunity at the

motion to dismiss stage, as the immunity attaches only when it is plain on the face of the complaint, even accepting its allegations as true. *See Hafley v. Lohman*, 90 F.3d 264, 266–267 (8th Cir. 1996).

Defendants make no argument involving prong two of the qualified immunity analysis—that is, they do not argue that even if a constitutional violation occurred, the law was not “clearly established.” Instead, they merely restate their previous arguments that Hageman’s complaint “fails to allege any constitutional violations.” Ans. Br. 15. These arguments fail for the reasons articulated above.

Were this Court to engage in an independent inquiry into whether Defendants were entitled to qualified immunity at the motion to dismiss stage, it would still find no basis to provide Defendants qualified immunity on the grounds that the alleged violations were not of “clearly established” rights. This Court’s precedent clearly establishes the right to be free of the use of significant force for no penological purpose. *See, e.g., Smith*, 759 F.3d at 859 (affirming a 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); *see also* Op. Br. 12–14 (discussing this Court’s significant history of cases that establish that prison officials may not use heightened force out of animus or otherwise without provocation). It is also clearly established that prison officers may not punish people for performing First Amendment activities. *See, e.g., Gainor v. Rogers*, 973 F.2d

1379, 1385, 1387 (8th Cir. 1992) (denying qualified immunity for a plaintiff's First and Eighth Amendment claims when the plaintiff was falsely arrested, imprisoned, and punished with excessive force after performing activities protected by the First Amendment). It would be in error to grant Defendants qualified immunity on either claim at such an early stage of the proceedings.

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.

October 20, 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. Additionally, when requested by this Court, undersigned counsel sent ten paper copies to the Court and one to the opposing party.

October 20, 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 2,415 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: October 20, 2022

/s/ Samuel Weiss
Samuel Weiss